

COMMENT LETTER # 2

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July 6, 2006

By Hand Delivery and Electronic Mail

John Webb, Chief
Office of Environmental Services – South
Caltrans North Region
2389 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Re: Shingle Springs Interchange Project
03-ED-50-KP R 16.6/R 18.7
State Clearinghouse Number: 2001072018

Dear Mr. Webb:

The comments that follow are submitted on behalf of El Dorado County and the El Dorado County Air Quality Management District. The comments are arranged into five areas. At the outset we describe the appropriate scope of environmental review for this Supplemental Environmental Impact Report ("SEIR") based on our understanding of the Third District Court of Appeals recent opinion. We then focus on the inadequacies of Caltrans' treatment of air quality impacts, traffic and the two smaller casino alternatives. We close with a discussion of Caltrans' failure to provide the necessary 45-day notice period.

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I. Scope of Environmental Review

The Court of Appeal's specific holding is as follows:

To be sufficient, the EIR will have to disclose and analyze what the interchange/hotel-casino's specific traffic-based ROG and NOx emissions (or estimates) are, what their contributions to the regional emissions budgets are, and whether these emissions and contributions are significant (for example, in comparison to other existing or planned projects within the transportation conformity analysis). The EIR must also

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consider and analyze the alternative, or alternatives, of a smaller hotel and casino complex. The matter is remanded to the trial court for it to issue a peremptory writ of mandate consistent with this disposition.

Decision at pp 57-58.

The SEIR does, in fact, disclose what the interchange/hotel-casino's specific traffic based ROG and NOx emissions are but provides no analysis. The SEIR also discloses what their contributions to the regional emissions budgets are, but again without any analysis. More importantly, the SEIR concludes that these emissions are insignificant. By the County's count Caltrans has now used four different thresholds of significance to reach the same conclusion – air emissions from 3.5 million vehicles are insignificant. As will be discussed below, Caltrans' latest threshold of significance has more problems than the three that preceded it. Caltrans took a different approach with traffic, relying on projections that it knew were wrong. In addition, the SEIR gives short shrift to the Court's command that Caltrans analyze a smaller hotel and casino complex by hiding behind the previous determination that none of the impacts from the larger complex were significant and concluding simplistically that impacts from the smaller alternatives are also necessarily insignificant – without disclosing what the actual impacts of the smaller alternatives are. This does not satisfy CEQA or the Court's decision.

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II. Air Quality

A. Disclosure and Analysis of Project-Specific Emissions.

The SEIR is inadequate because it does not contain sufficient information for the County to comment on the methodology, accuracy or results of the new EMFAC-BURDEN emission estimates discussed in sections 5.5-7 through 5.5-7.3. One of the primary purposes of an EIR is to disclose information to the public that will enable informed public comment. CEQA Guidelines, sections 15120, 15121. The EMFAC-BURDEN discussion in the SEIR does not satisfy that purpose because it describes only the claimed results of running the models, and does not present substantial evidence (or indeed any evidence at all) concerning how the two models were set up or run, thus preventing the County from fully understanding or replicating the modeling or determining whether the models were run properly. The SEIR presents certain numerical modeling results, but there is no supporting analysis. Simply referring to two models by name and presenting take-it-or-leave-it emissions impact estimates is not

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sufficiently informative or useful, and does not constitute a proper analysis or the analysis the Court specifically required.

CEQA contemplates that technical information, such as information describing how air quality modeling has been conducted, will be included in a technical appendix, so that the public can understand and comment on the specific assumptions, inputs, outputs and other important details that reveal whether the modeling was done properly. CEQA Guidelines, section 15147. Both the Environmental Assessment prepared by the National Indian Gaming Commission and the EIR/EA for this project contained at least some information (albeit limited and erroneous) in technical appendices describing Caltrans' prior air quality modeling. By contrast, the SEIR has no air quality appendix, and is completely devoid of any modeling details, thus preventing the County from examining and commenting on the modeling.

In order to comment effectively and intelligently the County needs at least the following information to be provided regarding the EMFAC-BURDEN modeling conducted by Caltrans:

- All relevant traffic-related and operational information, assumptions, settings and input used in support of the modeling
- All non-traffic related information (i.e. emissions from other types of sources), assumptions, settings and input, if any, used in support of or in conjunction with the modeling to estimate total project ROG and NOx impacts
- All inputs, assumptions and settings (default and non-default) used to run EMFAC
- All EMFAC outputs, whether used to run BURDEN or not
- All inputs, assumptions, and settings (default and non-default) used to run BURDEN, including any specific outputs from EMFAC
- All outputs generated by BURDEN
- Electronic disks containing the actual modeling runs for both models that resulted in the air quality impacts claimed in the SEIR

The County requests all such information for both versions of the modeling run by Caltrans (EMFAC7F-BURDEN7F, and EMFAC2002-BURDEN2002).

B. Applicability of AQMD Thresholds and Missouri Flat.

In the SEIR Caltrans determined that the project-specific impacts of the hotel-casino were insignificant. It did so by using, for the first time, a standard borrowed from

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federal law that was used by EPA to examine pollution transport between states on the east coast. That standard is, on its face, a technically invalid, project-biased threshold based on irrelevant federal interstate transport considerations. Caltrans was acting well outside of its area of expertise and competence when it decided to use it. The fact that Caltrans had to go so far to find a threshold suited to its purposes is remarkable in itself. It is even more remarkable given the fact that there are applicable thresholds available on the local, regional and state level right here in California. One of them was discussed by the Court of Appeals as potentially applicable – the County Air Quality Management District CEQA significance thresholds. The applicability of these thresholds was expressly held open for consideration by the Appeals Court on remand (Decision, p. 19), yet the SEIR does not even mention them. The AQMD thresholds must be both considered and used to evaluate the project-specific air quality impacts shown in the SEIR in order to comply with CEQA.

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The El Dorado County AQMD adopted ROG and NOx significance thresholds set at 82 lbs/day for project operation as part of the February 2002 edition of its "Guide to Air Quality Assessments: Determining Significance of Air Quality Impacts Under the California Environmental Quality Act." The Guide has been continuously published and is available on the AQMD website at:

http://www.co.el-dorado.ca.us/emd/apcd/guide_airquality.htm.

It is a violation of CEQA for Caltrans to not apply these significance thresholds in this case for a number of reasons.

First, the AQMD thresholds must be used because they are the official thresholds applicable to all projects in El Dorado County, and the AQMD, in its previous comments on this project and in these comments, is requesting that they be used. The AQMD is the applicable air pollution control agency in El Dorado County responsible for regulating all emission sources and meeting all state and federal air quality planning requirements. The AQMD's regulatory authority extends not just to "stationary" sources such as factories and businesses, but also to mobile source emissions from indirect sources and transportation activities.¹ The interchange/hotel-casino project is an indirect source/transportation project. The AQMD thresholds were adopted after public hearings in 2002 by resolution of the El Dorado AQMD board, pursuant to CEQA Guideline sec. 15064.7, which encourages all public agencies to "develop and publish thresholds of significance that the agency uses in the determination of the significance

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¹ See Health & Safety Code secs. 40716, 40717.

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of environmental effects." Thus the AQMD thresholds apply to all sources under its regulatory authority, including this project.

Under these circumstances, where the AQMD has set CEQA thresholds that stand as the only official CEQA air quality thresholds in El Dorado County, and where the AQMD specifically requests their use, the AQMD thresholds assume special status and it would be an abuse of discretion for Caltrans not to apply them.² As thresholds adopted under section 15064.7, the AQMD thresholds are entitled to deference. The only way for Caltrans to overcome the special status of the AQMD thresholds would be for Caltrans to adopt its own thresholds under sec. 15064.7, but it has not done so.³

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Second, use of the AQMD thresholds is the only way Caltrans can discharge its obligation to give proper consideration to California's state ambient air quality standards ("AAQS"). The "1% of motor vehicle emissions budgets" threshold used by Caltrans in the SEIR (p. 5.5-7) is derived directly from the criteria used by EPA in 1998 (the "NOx SIP Call" regulations) and in 2005 ("CAIR" regulations) to determine which states (regions) contribute significantly to interstate ozone and ozone precursor transport in the eastern portion of the nation. Both of those regulations address attainment of the federal ozone AAQS, but give no consideration whatsoever to the California AAQS for ozone. As the California AAQS for ozone are more stringent than their federal counterpart,⁴ Caltrans' approach will necessarily under-evaluate impacts, and is therefore inadequate as a CEQA methodology.

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There is no question that CEQA requires evaluation of impacts vis-à-vis the California AAQS. Appendix G to the CEQA Guidelines specifically requires a determination whether the project would "violate *any air quality standard* or contribute substantially to an existing or projected air quality violation" (App. G, III. (b)), or would "result in a cumulatively considerable net increase of any criteria pollutant for which the

² The AQMD thresholds would not be mandatory where the AQMD has not requested their use.

³ To adopt thresholds under sec. 15064.7, Caltrans would have to go through an open, public and thorough process of: 1) consulting with the California Air Resources Board ("CARB") and local air districts throughout the state, 2) identifying and formally proposing a reasonable set of possible thresholds, along with a supporting rationale for the thresholds, 3) receiving comments from the public (including the El Dorado County AQMD and other air pollution control agencies), and then 4) adopting final thresholds after due consideration of all comments. By following this process, there would be a reasonable assurance that Caltrans' thresholds would be relevant to California and protective of air quality in the state.

⁴ The federal 8-hour ozone standard is 0.08 ppm, whereas the California 8-hour ozone standard is 0.070 ppm. In addition, there is no federal counterpart to the California 1-hour ozone standard of 0.09 ppm. The manner in which California determines violations of its AAQS is also more stringent. See 13 CCR 70100-70201.

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project region is nonattainment under an applicable federal or *state ambient air quality standard* (including releasing emissions which exceed quantitative thresholds for ozone precursors." (App. G, III. (c).) Moreover, in the DEIR for this project, Caltrans has specifically referred to the California AAQS (DEIR, pp. 5.5-3 thru 5.5-9), thus recognizing both their relevance under CEQA and its obligation to consider the significance of air quality impacts in light of those standards. Unfortunately, the federal interstate ozone transport-based criterion adopted by Caltrans in the SEIR does not refer to or consider state AAQS, thus making the SEIR deficient on its face.

The significance thresholds for ozone in the County AQMD CEQA Guide, set at 82 lbs/day, were adopted in consideration of the state AAQS,⁵ and therefore must be used by Caltrans to consider impacts vis-à-vis the state standards, even if its federal ozone transport criterion is deemed adequate for considering impacts under the federal ozone AAQS. At this stage in the process Caltrans cannot repair the SEIR after the fact by identifying some new criterion for determining significance versus the state AAQS in its response to comments, because such an approach would deprive the public of its opportunity to comment on the criterion and therefore violate the central CEQA tenet of providing complete information for public comment. If Caltrans intends to address the significance of the air quality impacts in the SEIR in comparison to the state AAQS, it may only do so by revising the SEIR and opening a new 45-day public comment period.⁶

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Third, Caltrans is foreclosed from not using the AQMD thresholds because it has relied on EIRs that employ those thresholds in making its comparison with the Missouri Flat projects, as set forth at pp. 5.5-10- thru 5.5-11 of the SEIR. In the Missouri Flat comparison, Caltrans refers to the County's April 1998 EIR for the "Missouri Flat Area MC&FP and Sundance Plaza and El Dorado Villages Shopping Center Projects ("Area EIR"). The Area EIR, which is hereby incorporated by reference into these comments, addressed at the "program level" the air quality impacts of the programmatic funding mechanism for general development of the Missouri Flat area near SR 50 a few miles west of Placerville, known as the Master Circulation & Funding Plan ("MC&FP"). The EIR also separately addressed, at the project level, the impacts of two private developments, the Sundance Plaza and the El Dorado Villages Shopping Center Projects. According to the SEIR, the Area EIR "concluded that the traffic-related emissions of the Missouri Flat Area projects were not significant because they did not cause exceedances of the regional emissions budgets." (SEIR, pp. 5.5-10 – 5.5-11.)

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⁵ See AQMD Guide, Chapter 3, p. 5.

⁶ As discussed elsewhere, there are a number of independent reasons for this.

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The SEIR is plainly wrong, and Caltrans has committed a serious error. The Area EIR in fact concluded that the operational impacts from the MC&FP and from the two private developments were "significant," rather than "not significant" as claimed in the SEIR. See pp. 4.5-25 thru 4.5-37 of the Area EIR. Also see p. 4.5-43 where the Area EIR concludes explicitly that "significant and unavoidable [air quality] impacts remain" for the MC&FP and both development projects after consideration of mitigation. But the key point is that in reaching these conclusions, the Area EIR did *not* use regional emissions budgets as the significance criterion, as claimed in the SEIR;⁷ rather, the Area EIR applied the significance criteria that had been adopted at the time by the El Dorado County AQMD, or 10 lbs/day for ROG and NOx. This is readily apparent from the text and tables on pp. 4.5-25 thru 4.5-37 of the Area EIR.

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The Court of Appeals suggested that the specific traffic-based emission impacts for the interchange/hotel-casino could be compared against other projects covered by the transportation conformity analysis. Decision, pp. 57-58. The County agrees with Caltrans that such a comparison would be difficult, as individual project impacts are not determined as part of a conformity analysis. However, given that the Court asked for a comparison, and given that Caltrans has referenced the air quality impacts shown in the County's EIR for the Missouri Flat Area MC&FP and Sundance Plaza and El Dorado Villages Shopping Center Projects (Area EIR) as a proper basis for comparison, the County has corrected the errors in the Caltrans description of the findings in the Area EIR, as explained in section 2. above, and determined that the comparison results necessarily in the conclusion that the ROG and NOx impacts from the Rancheria project are significant, and must be mitigated as required by CEQA. Table 2 below lists the ROG and NOx impacts shown in the Area EIR and compares them directly with the ROG and NOx impacts shown in the SEIR.

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⁷ Caltrans is apparently confusing the Area EIR with the EIR for the Missouri Flat – SR 50 interchange project ("Interchange EIR"). In the Interchange EIR, air quality impacts were initially found in the draft EIR to be insignificant because the project conformed. However, in Master Response D to the final EIR for the interchange, the County applied its AQMD significance thresholds to analyze air quality impacts associated with operation of the interchange (as it is requesting Caltrans to do here) and found them to be insignificant under that analysis because the interchange reduced traffic congestion and thereby resulted in reduced air impacts.

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Table 1 Comparison of Air Quality Impacts (lbs/day) ⁸		
	ROG	NOx
MC&FP (Mobile Source, Phase 1) ⁹	185.9	309.9
Sundance Plaza (Mobile Source)	208.8	276.3
El Dorado Villages (Mobile Source)	64.3	85.0
Rancheria (Traffic-Related, BURDEN ⁷ F, no by-pass credit)	220	460
Rancheria (Traffic-Related, BURDEN ⁷ F, with by-pass credit)	180	360
Rancheria (Traffic-Related, BURDEN 2002, no by-pass credit)	160	540
Rancheria (Traffic-related, BURDEN 2002, with by-pass credit)	160	420

Note: Emissions impacts shown in **bold** are significant based on El Dorado County AQMD current ROG and NOx thresholds set at 82 lbs/day.

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As shown in Table 1, under all scenarios, NOx emissions from the Rancheria project exceed NOx emissions from each of the projects evaluated in the Area EIR. Rancheria ROG emissions are above ROG emissions for the MC&FP and the Sundance project in one scenario and about the same or slightly lower in the other three scenarios; Rancheria ROG impacts are considerably higher than ROG emissions from the El Dorado Villages project in all scenarios.¹⁰

The Area EIR, applying the then-applicable El Dorado AQMD significance criteria of 10 lbs/day for ROG and NOx, determined that the impacts of all three projects were

⁸ The emission estimates for the MC&FP, Sundance and El Dorado Villages projects were prepared using URBEMIS5. In the SEIR, fn. 3, p. 5.5-11, Caltrans notes that comparing URBEMIS results with BURDEN results is a valid comparison.

⁹ MC&FP future-year 2015 emissions for Phases 1 and 2 combined are higher, but should not be used for comparison because the SEIR emission impacts for the Rancheria are for 2009 only, i.e. based on project completion and not its impacts in future years.

¹⁰ In Table 5.5-10 of the SEIR, Caltrans improperly attempts to inflate the impacts shown in the Area EIR by combining impacts from the three projects. This is improper because the Area EIR treated the three projects separately, and did not combine emissions; Table 5.5-10 alters and misrepresents the methodology used in the Area EIR and is therefore invalid. Further, the URBEMIS emissions shown for "Missouri Flat" in that table appear to be in error and do not relate to any of the emission impacts shown in the Area EIR.

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significant,¹¹ both before and after consideration of mitigation. See Area EIR, pp. 4.5-25 – 4.5-35, 4.5-43. Under those same criteria, the Rancheria project will likewise have significant impacts. Applying the current AQMD significance criteria of 82 lbs/day, the projects analyzed in the Area EIR are also significant for ROG and NOx impacts, except for ROG emissions from El Dorado Villages. Under the current AQMD criteria, the Rancheria ROG and NOx impacts remain significant, by a factor of two or more for ROG, and by a factor of four or more for NOx. Overall, the impacts of the Rancheria are considerably higher than each of the projects analyzed in the Area EIR.

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Since Caltrans has cited the Area EIR for comparative purposes, a proper comparison based on the AQMD significance criteria used in the Area EIR (as then-applicable or updated), as shown in Table 2 above, indicates unequivocally that Rancheria ROG and NOx traffic-related emissions are significant.

Finally, in footnote 2 on p. 5.5-11 of the SEIR, Caltrans claims that the County's EIR for the Missouri Flat Interchange "failed to acknowledge" emissions from traffic generated by the development described in the Area EIR. Again, Caltrans is wrong. The Interchange EIR¹² specifically refers to the Area EIR dozens of times, and lists the Area EIR as a referenced document (see Chapter 8, "References"). In chapter 3 of the Interchange EIR, which addresses environmental impacts, the growth described in the Area EIR is specifically taken into account and is described as the operative assumption for determining traffic and air quality impacts. For example, the Interchange EIR states:

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The proposed action would not introduce a new transportation facility to the project area, nor would it increase or provide new access. The intent of the proposed action is to improve the Missouri Flat Road interchange to solve existing operational deficiencies and congestion problems *and also to accommodate the traffic demands associated with approved growth through 2015, consistent with the approved MC&FP...* Although the proposed action would accommodate this planned growth, it is unlikely that it would induce unplanned growth since it *does not provide capacity above and beyond what is needed to accommodate planned growth to 2015, consistent with the MC&FP* and Writ of Mandate. However, the proposed action could hasten planned growth in the immediate vicinity of

¹¹ As explained above in section 2, the SEIR *mistakenly* states that the Area EIR determined the impacts of the three projects were not significant.

¹² The Interchange EIR can be viewed at: <http://www.co.el-dorado.ca.us/DOT/missouriflatdeir.html>, and is incorporated herein by reference.

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the interchange. With the exception of the property formerly proposed for *Sundance Plaza* and the already-approved *El Dorado Villages* shopping center, the area adjacent to the project area is already developed.

Interchange EIR, pp. 3-15 – 3-16; emphasis added.

Similarly, in analyzing the environmental consequences of the interchange, the Interchange EIR states: "Data used to characterize the study area and the region were obtained primarily from the County General Plan, the 2000 U.S., Census, the MC&FP, and the *MC&FP EIR* (EDAW, 1998)." (Interchange EIR, p. 3-23, emphasis in original). Appendix I to the Interchange EIR discusses the relationship between mitigation measures adopted at the program level in the Area EIR and the project-level measures proposed in the Interchange EIR. There are numerous other references to the MC&FP and MC&FP EIR in the Interchange EIR. Thus it is clear that the Missouri Flat interchange EIR *did* acknowledge and use the MC&FP traffic impacts, including specifically the traffic impacts from the associated land uses. The Missouri Flat EIR therefore is a valid precedent for use of the County AQMD's thresholds of significance.

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C. Inapplicability of the Eastern Ozone Transport Significance Threshold.

Use of the EPA Eastern Interstate Ozone Transport significance threshold in the SEIR to evaluate project-level air quality impacts in the Sacramento Area is invalid and inadequate under CEQA. In the SEIR, Caltrans has gone far afield and identified the U.S. EPA's "1%" threshold for determining whether states in the Midwest and East are contributing significantly to interstate ozone transport to eastern states as its threshold for determining whether the project-specific air quality impacts of the Rancheria interchange are significant. Caltrans' use of the EPA eastern interstate transport threshold is so obviously inappropriate, irrelevant and technically flawed as to amount to an abuse of discretion. Use of the EPA eastern interstate transport threshold also violates the Court of Appeals decision, and is inadequate under CEQA for a number of reasons.

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In adopting the EPA eastern interstate transport threshold, Caltrans has lost track of the actual task at hand: to determine whether the air quality impacts of a specific project are significant or not with respect to air quality in the Sacramento area. The fundamental problem with using the EPA eastern interstate transport threshold is that it was designed to evaluate the significance of emissions transported from entire regions (states) to other regions (states), and not to evaluate local/intra-area emission impacts from individual projects. In its 1998 NOx SIP Call and 2005 CAIR regulations,

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EPA considered the *collective* transport impacts of ROG and NOx emissions from all sources (mobile, stationary, and area sources) in several dozen eastern states as they affected a number of other downwind states. It did not evaluate impacts at the local/intra-area level, and it did not evaluate the significance of emissions from individual sources. In other words, EPA was addressing *interstate* air pollution impacts of *combined* emissions from all sources in a state, and not *local/intra-area* impacts from an *individual project* as is called for in this case. The analysis of the air quality impacts for the Rancheria project must examine impacts in the *Sacramento area* from project-generated vehicle travel in the *Sacramento area*. Referring to EPA's eastern interstate ozone analysis and threshold is irrelevant to this task, and provides no information regarding local/intra-area impacts for Sacramento.

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The following points explain further why there is no substantial basis for Caltrans' use of EPA's "1%" eastern interstate ozone transport threshold.

1. Use of the EPA Eastern Interstate Threshold in California is Technically Flawed.

The technical criteria used by EPA to determine significance of transported pollutants in its NOx SIP Call and CAIR regulations have no relevance for California.

- The impacts evaluated in those regulations pertained to transport between states other than California, involving NOx precursor levels, and interstate ozone levels, not representative of California; in fact, California generally experiences ozone levels much higher than the eastern states,¹³ which compels the conclusion that any criterion used for determination of significance for ozone precursors for the eastern states will substantially underestimate significance in California.
- The significance criterion adopted by EPA in the NOx SIP Call and CAIR regulations was based on levels of emissions, ozone contribution levels, transport distances, meteorology and air quality modeling, as well as emission control cost estimates, that applied specifically to eastern transport, and has no relevance to California. Caltrans cannot simply "transfer" EPA's modeling results for the eastern portion of the U.S. to California.

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¹³ The federal Clean Air Act (CAA) recognizes the higher ozone levels in California as "compelling and extraordinary conditions" and authorizes California, uniquely among all states, to adopt its own more stringent new motor vehicle emission standards. See sec. 209(b) of the federal CAA (42 USC 7543(b)).

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- The NOx SIP Call and CAIR regulations only looked at NOx emissions, and did not evaluate ozone impacts of ROG emissions. Both CEQA and the Court of Appeals decision require the evaluation of ROG impacts. EPA explained its focus on NOx-only by noting in the preamble to its Notice of Proposed Rulemaking (NPRM) for the NOx SIP Call that "VOC [ROG] controls are effective in reducing ozone locally and are most advantageous in urban nonattainment areas." 62 FR 60320. Based on EPA's statement, it is evident that consideration of ROG impacts is important in this case because the project will have impacts locally, i.e. within the Sacramento urban nonattainment area. Use of EPA's eastern interstate transport threshold, which is solely NOx-based, is therefore clearly inadequate for evaluating local/intra-area ROG impacts.
2. The Eastern Interstate Transport Threshold is Based on EPA Emission Transport Authority, Not EPA Authority Over Individual Sources.

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In evaluating the adequacy of Caltrans' use of the EPA eastern interstate transport threshold, it is important to recognize the limited application of that threshold under the federal Clean Air Act, because it reveals the similarly limited scope of what Caltrans is considering in the SEIR. EPA's NOx SIP Call and CAIR regulations were adopted under EPA's authority in sec. 110(k)(5) of the federal Clean Air Act (42 U.S.C. 7410(k)(5)) to determine whether "the applicable implementation plan for any area is substantially inadequate ... to mitigate adequately the interstate pollutant transport described in section 176A or section 184..."¹⁴ EPA's action was not taken to address the inadequacy of implementation plans to "attain or maintain the relevant [NAAQS]," as it is also authorized to do in sec. 110(k)(5).

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This distinction between the adequacy of a SIP in dealing with emissions that emanate from sources within an area and have impacts within that area (or within the same state) versus the impacts of those emissions in other regions is critical. By only addressing transport impacts, EPA's 1% eastern regional transport significance threshold clearly omits and does not consider local or intra-area impacts of locally emitted pollutants. As discussed in the NOx SIP Call and CAIR regulatory preambles, in some areas local or intrastate impacts can be much greater than impacts that are transported interstate. In fact, that is the case for the emissions from this project, which primarily impact the Bay Area, the Sacramento Area and western El Dorado County,

¹⁴ EPA also cites sec. 110(a)(2)(D) of the federal Clean Air Act (42 U.S.C. 7410(a)(2)(D)), which likewise addresses whether sources "contribute significantly" to "nonattainment in ... any other State" and is focused on interstate impacts to the exclusion of local/intra-area impacts.

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either directly or by intrastate transport, and have minor impacts if any in Nevada to the east. By adopting the EPA threshold, Caltrans may be addressing possible interstate impacts of traffic-related emissions from the Rancheria project, but is not addressing local/intra-area impacts. Such an approach completely leaves out one of the two possible scopes of impact identified in the federal Clean Air Act, and is therefore substantively inadequate and in violation of CEQA's requirement for full disclosure of all impacts.

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3. EPA Stated That Its NOx SIP Call and CAIR Interstate Analysis Did Not Apply to Individual Sources.

Closer examination of EPA's statements about the scope of the NOx SIP Call and CAIR regulations shows that EPA did not intend for those regulations to be used for evaluation of individual sources at all. For example, in its preamble to the NOx SIP Call NPRM, EPA indicated, in the context of explaining how it was evaluating the "entire inventory" of NOx emissions in each state, that:

By contrast, EPA is not, in this rulemaking, determining whether particular sectors of the NOx inventory "contribute significantly" and is not mandating controls on particular sectors of that inventory.

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62 FR 60325.

Further along in the preamble, EPA made the same point again:

The fact that emissions from any particular source, or even groups of sources, may in-and-of-themselves be small, does not mean those sources' emissions are not "significant" within the meaning of section 110(a)(32)(D).

62 FR 60326.

These statements by EPA make it clear that while its "collective" evaluation of all the NOx emissions from a state in the NOx SIP Call (and the extension of that analysis in the CAIR regulation) was the only feasible approach for the purpose of considering interstate impacts, its analysis has no relevance as far as the significance or non-significance of emissions from individual sources is concerned. Unfortunately, Caltrans has ignored these all-important qualifiers, and improperly tried to apply EPA's eastern

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interstate transport threshold on a project-specific level – in direct contravention of EPA's admonitions that it is not intended to be so applied.

In adopting the eastern interstate transport threshold, EPA clearly understood that the threshold was applicable only in the context of evaluating interstate transport of NOx emissions, and that it would be a violation of the federal Clean Air Act for that threshold to be used to evaluate the significance of individual sources. By using EPA's eastern interstate transport threshold to look at Rancheria-specific impacts, Caltrans has done what EPA expressly said should not be done. By improperly using an interstate transport threshold, Caltrans has violated the central CEQA tenet that an EIR must fully and accurately inform the public about all project impacts.

13 Cont.

4. The SEIR Creates an Information Gap Because It Fails to Set a Threshold That Recognizes the Importance of Individual Sources.

The consequence of misusing EPA's interstate significance threshold, which was designed to gauge NOx emissions on an entire-state basis and is not sensitive to project-level emissions, is that Caltrans has turned the CEQA information-generation process into a disinformation process, in derogation of that the primary objective of CEQA. It is not possible to draw any valid conclusions about the impact of an individual project using a regional, interstate criterion. Using a regional criterion locally is doomed to produce inaccurate, misleading results that grossly under-represent the importance of individual sources on a local/intra-area basis. Within any given state, a single facility or project will rarely if ever exceed 1% of total emissions. The same applies on a local/intra-area basis. In the Sacramento nonattainment area, there are thousands of stationary and area sources and millions of vehicles that all contribute to violations of state and federal air quality standards, but do not amount to 1% of area emissions. EPA emphasized this point several times in the NOx SIP Call and CAIR regulatory preambles.¹⁵ Using 1% of total area emissions as the significance criterion has the

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¹⁵ For example, in the preamble to the NOx SIP Call NPRM, EPA states in its "Technical Analysis of Significant Contribution": "...ozone is generally the result of emissions of NOx and VOC from hundreds of stationary sources and millions of vehicles, each of which is likely to be responsible for much less than 1 percent of the overall inventory of precursor emissions. A source or group of sources should not be exempted from treatment as a significant contributor merely because it may be a small part, in terms of total emissions, of the overall problem when all or most other contributors, are also relatively small parts of the overall problem." 62 FR 60335. Also see preamble to NPRM at p. 60326 and preamble to final NOx Sip Call regulation, 63 FR 57375, where EPA notes that harmful levels of ozone result from NOx and VOC [ROG] emissions from "thousands of stationary sources and millions of vehicles," each contributing a "small percentage of the overall problem." EPA adopted its 1% test for statewide emissions in order to avoid exempting such small sources from being subject to controls in state plans to address ozone

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effect of excluding virtually all individual emission sources. This is directly contrary to air pollution control requirements in both the federal Clean Air Act and the California Clean Air Act, which require control and mitigation of sources that contribute far less than 1% to area-wide emissions. Because it fails to recognize that significant air pollution can result from many individual sources, use of an interstate-level significance criterion (in this case, 1% of the mobile source emission budgets) is clearly erroneous. Such an approach trivializes and conceals impacts – a result that is clearly contrary to and forbidden by CEQA.¹⁶

14 Cont.

5. Project-Level Criteria Are Feasible and Available to Evaluate Local/Intra-Area Impacts of a Regional Pollutant Like Ozone.

In the SEIR, Caltrans attempts to justify its use of EPA's NOx SIP Call and CAIR interstate threshold by noting that ozone is "regional" in nature (SEIR, p. 5.5-6 – 5.5-7). The County agrees that ozone is primarily an area or regional pollutant, but that does not explain or justify the use of a metric derived exclusively for evaluating interstate impacts, where the actual objective is to evaluate project-specific impacts on a local/intra-area level. ROG and NOx emissions from a given project may contribute to interstate impacts, but they also have separate and distinct impacts on air quality at the local/intra-area level, and these latter impacts cannot be ignored. There is simply no nexus between determining what is significant on an interstate level (particularly where California is not one of the states included in the analysis) and determining what is significant on a local/intra-area level. *What is needed is a criterion tied to state and local air pollution control programs*, i.e. a threshold that considers projects significant under CEQA to the same extent they are considered important for air quality regulatory purposes by California and the AQMD.¹⁷ That is how the El Dorado County AQMD derived its significance thresholds (and how other AQMDs have derived theirs), and it is what Caltrans should have done in the SEIR.

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Even more incorrect, is the statement on p. 5.5-6 of the SEIR that "...all recognized measures of the significance of ozone precursor emissions are regional measures." This statement is without support. In fact, non-regional, project-specific measures abound, and are regularly used to evaluate the significance of project-

transport. By applying EPA's 1% regional transport threshold *in reverse*, i.e. to evaluate an individual project, the SEIR creates the very exemption for individual sources that EPA was trying to avoid.

¹⁶ This point is discussed further below.

¹⁷ The ROG and NOx emissions shown in the SEIR exceed by several times the emission level for a "major source" as defined by the El Dorado AQMD. See AQMD Rule 523, defining "major stationary source" and "major modification."

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specific ozone precursors. The most obvious are those in the County AQMD CEQA Guide, which sets emissions of 82 lbs/day of either ROG or NOx as the significance level. The County's thresholds are project-specific, and do not consider or require analysis of regional impacts. Other examples of project-specific thresholds for ozone precursors, which do not look at regional emissions, include the CEQA thresholds adopted by the Sacramento Metropolitan AQMD, the Bay Area AQMD, the Monterey Bay APCD and the South Coast AQMD.¹⁸ Similarly, the new source review offset thresholds used in the federal Clean Air Act, the California Clean Air Act, and air pollution control districts throughout the state are examples of project-specific measures of emission levels that dictate mitigation.

15 Cont.

Another project-specific non-regional measure of significance for ozone precursors, particularly à propos for this project, is the criteria used to determine applicability of indirect source regulations. The interchange/hotel-casino project is an indirect source, because it is a development that increases traffic and causes additional emissions from that traffic. El Dorado County does not have an indirect source regulation at this time, but such a regulation was recently adopted for a place considerably closer than the East Coast, the San Joaquin Valley. The indirect source rule adopted in December 2005 by the San Joaquin Valley Unified APCD, Rule 9510, applies to any development project that comprises more than 2,000 square feet of commercial space, or which has a mitigated baseline above 2.0 tons/year of NOx. This regulation, because it requires mitigation of emissions from indirect sources above either of those levels, would naturally lend itself to application as a CEQA threshold in this case. If that rule were applied here, emissions from the casino-hotel would be found significant and would be subject to all feasible mitigation resources.

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Accordingly, the correct statement about evaluating the significance of ozone precursor emissions is the precise opposite of what Caltrans has said; it is readily evident that non-regional, project-specific measures of significance are available and regularly used. The eastern interstate ozone transport significance threshold used in the SEIR is based on the false premise that ozone precursors can only be evaluated on a regional basis. It is inherently an abuse of discretion for the SEIR to use EPA's federal criterion for evaluating the effect of interstate ozone transport in the East (or any other regional criterion) for determining the significance of project-specific emissions from Rancheria traffic in California and the Sacramento Area in particular.

18 Please refer to the websites for these districts to view their CEQA significance thresholds.

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6. Caltrans Has Ignored CARB's Intrastate Transport Criteria

Even if Caltrans' regional transport approach to determining significance is given credence, Caltrans has omitted the one such program that is applicable to California, the CARB intrastate ozone transport program. Although Caltrans claims to have researched widely, it is hard to understand how Caltrans missed this program, which has been formally adopted in CARB regulations (17 CCR 70500-70601 and has regularly been reviewed by CARB in public meetings and hearings over the past 15 years.

Under its ozone transport program, CARB has identified areas of the state between which significant or overwhelming levels of ozone or ozone precursors is transported, referred to as "transport couples." For example, the Broader Sacramento Valley (defined to include all of the Sacramento and Yolo-Solano air districts, and the western portion of El Dorado County) is impacted by ozone from the Bay Area and the San Joaquin Valley, and the Mountain Counties (including portions of El Dorado County) are impacted by ozone from the Broader Sacramento Valley, the San Joaquin Valley and the Bay Area. Where ozone transport occurs, CARB regulations require the upwind air pollution control districts to "mitigate the impact of pollution sources within their jurisdictions on ozone concentrations in downwind areas commensurate with the level of contribution." 13 CCR 70600(b). The CARB regulations go on to specify that this mitigation obligation includes, for the Broader Sacramento Area, the "adoption and implementation of a) all feasible measures," b) "best available retrofit technology" on all existing stationary sources, and c) a stationary source permitting program designed to achieve "no net increase" from new or modified stationary sources that "emit or have the potential to emit 10 tons per year or greater of an ozone precursor." 13 CCR 70600(b)(1); emphasis added. The same requirements apply to the San Francisco Bay Area. See 13 CCR 70600(b)(2).

16 Cont.

In its most recent staff report on intra-state transport, CARB had the following to say about federal ozone planning efforts:

Some of the downwind areas that are significantly impacted by transport exceed both State and federal ozone air quality standards. In these cases, achieving federal as well as State air standards in the downwind area is a shared responsibility. *Federal law does not establish specific transport mitigation requirements for transport within state boundaries. Where intrastate transport is an issue, states must devise an appropriate*

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mechanism to ensure that federal standards are achieved in both upwind and down wind areas.

In California, the establishment of mitigation requirements for upwind districts is done through the mechanism provided in State law – ARB's transport mitigation regulations.

(April 4, 2003 CARB Staff Report entitled "Initial Statement of Reasons for the Proposed Amendments to the Ozone Transport Mitigation Regulations, at pp. 4-5; emphasis added.)

It is clear from this CARB staff statement that Caltrans erred by selecting a federal transport threshold as its CEQA threshold, because it fails to address intrastate transport. If regional transport thresholds are to be applied, therefore, it would be CARB's transport regulations that govern the very areas where traffic-related ozone precursor emissions from the Rancheria project will be emitted, and not some distant, irrelevant interstate threshold determined by EPA for another part of the country. It was clearly an abuse of discretion for Caltrans to ignore and not apply the CARB transport criteria, given the existence and direct applicability of the CARB transport program.

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Under its transport program, CARB has already determined that ozone pollution transported into El Dorado County from the Bay Area and the Broader Sacramento Area is significant or overwhelming on an intrastate basis. Applying that finding in this case, ozone precursor emissions from Rancheria traffic must be deemed significant under CEQA because they occur in those areas. Rancheria traffic emissions are further subject to a mandatory mitigation requirement, under CARB's "all feasible measures" requirement, regardless of the actual level of project-specific emissions. In addition, the project would be subject to a mandatory emission offset requirement, because the ROG and NOx emissions shown in the SEIR exceed, by three to ten times, CARB's 10 tons/year no net increase threshold.¹⁹ The offset requirement applies to all Rancheria

¹⁹ By enforcing the 10 tons/year no net increase requirement on emissions coming from the Bay Area to Sacramento, CARB determined that air quality reductions as small as 0.05 tons per day of NOx and 0.09 tons per day of ROG would occur in the Bay Area. See April 2003 CARB staff report, *supra*, at p. 24. These benefits could be used as project-specific significance criteria. If they are used as criteria, the emissions impacts in the SEIR exceed those levels and are shown to be significant. In the past, Caltrans has improperly tried to avoid the County's CEQA thresholds on the premise that they are based on "stationary source" emission offset criteria in the California Clean Air Act, and the County expects it will try to do the same with respect to the 10 tons/year threshold in the CARB transport regulations. Should Caltrans try that here, the point is rebutted by the fact the casino-hotel project, as an "indirect source" development (i.e. one that causes ROG and NOx indirectly through associated traffic rather than through

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traffic-caused ROG and NOx emissions; partial or incomplete offsets are not allowed. Both the "all feasible measures" and the offset requirements must be implemented by means of an enforceable mitigation monitoring plan, as required by CEQA.

In making this point, the County emphasizes that it does not believe that a transport-based criterion is sufficient under CEQA, because such a criterion evaluates only emissions that come in from other areas and excludes emissions that occur within an area. But if such an approach is allowed, the appropriate threshold is the CARB transport criteria and not EPA's eastern interstate transport threshold.

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7. The SEIR Violates the Court of Appeals' Requirement to Use a Project-Level Significance Criterion

The Court of Appeals directed Caltrans to disclose and analyze what the interchange/hotel-casino's specific traffic-based ROG and NOx emissions are, what their contributions to the regional emissions budgets are, and "whether those emissions are significant." Caltrans has violated this command by applying an interstate significance criterion to evaluate project-specific emissions. It should be evident that when the Court commanded Caltrans to analyze project-specific impacts for significance it was also commanding Caltrans to use a significance criterion or threshold that is applied at the project level. That the Court of Appeals did not intend for Caltrans to use an interstate-based analysis for evaluating project level impacts is clearly indicated by the Court's observation that Caltrans' conformity approach was adequate to address cumulative impacts, and that something additional to address project level impacts was needed. Decision, p. 16. By applying the threshold used by EPA to evaluate interstate transport, Caltrans has failed to provide the project-level significance test envisioned by the Court, and has improperly used a regional, cumulative impacts-type criterion²⁰ to evaluate project-specific emissions.

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on-site emission points) is but a certain type of "stationary source," as that term is generally used to refer to all sources within an air district's regulatory jurisdiction. See Health & Safety Code (H&SC) sec. 40716, providing specifically that indirect sources are subject to district regulation. Also see H&SC 40718, giving districts authority over "transportation sources" as part of its generic "stationary source" powers. Any final doubt about the applicability of the 10 tons/year offset criterion is eliminated by the fact that CARB determines whether transport is significant based on combined mobile source, area source and stationary source emissions. See, e.g., March 21, 2001 CARB staff report entitled "Assessment of the Impacts of Transported Pollutants on Ozone Concentrations in California," Appendix F. Caltrans is similarly foreclosed from objecting to the mitigation of vehicular emissions because the NOx SIP Call and CAIR regulations, cited in the SEIR, required mitigation based on collective emissions of all types of sources (mobile, area and stationary) within a state.

²⁰ As further explained below, Caltrans' regional analysis is also an impermissible "ratio"-type evaluation.

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8. Caltrans Has Used an Improper "Ratio"-type and "De Minimis" Type Significance Threshold

Caltrans' use of the EPA Eastern Interstate Ozone Transport Threshold violates the CEQA prohibition against "ratio"-type or *de minimis* thresholds. Under CEQA "ratio"-type or *de minimis* significance thresholds are invalid. In light of this principle, which Caltrans has acknowledged in its legal briefs, it is quite surprising that Caltrans would use EPA's 1% threshold for evaluating eastern interstate ozone transport, because that threshold is precisely the kind of criterion that is forbidden. The seminal case is *Kings County Farm Bureau v. City of Hanford*, 221 Cal App 3d 692 (1990). In *Kings County*, the city prepared an EIR evaluating air emissions from a coal-fired cogeneration plant. The technical approach taken in the EIR to evaluate ozone impacts was to compare the project's emissions of hydrocarbons (ROG) and NOx with total regional emissions of those pollutants. The EIR estimated that daily emissions from the project would not exceed 0.20 percent of total ROG and NOx emissions in King's County, and that project emissions were therefore minor and insignificant. More specifically, ROG and NOx emissions were shown to be less than 1% of total ROG and NOx emissions in the mid-San Joaquin Valley, and were deemed not significant cumulatively on that basis. This is precisely the approach taken in the SEIR, where Caltrans has determined that only project-specific emissions of ROG and NOx exceeding 1% of the regional mobile source emission budgets are significant.

This type of analysis was expressly rejected in *Kings County*. The Court explained:

The DEIR concludes the project's contributions to ozone levels in the area would be immeasurable and therefore, insignificant because the plan would emit relatively minor amounts of precursors compared to the total volume of precursors emitted in Kings County. *The EIR's analysis uses the magnitude of the current ozone problem in the air basin in order to trivialize the project's impact.* In simple terms, the EIR reasons the air is already bad, so even though emissions from the project will make it worse, the impact is insignificant.

The point is not that, in terms of ozone levels, the proposed Hanford project will result in the ultimate collapse of the environment into which it is to be placed. The significance of an activity depends upon the setting. (Guidelines, §15064, subd. (b).) *The relevant question to be addressed in the EIR is not the relative amount of precursors emitted when compared*

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with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.

221 Cal. App. 3d 718 (emphasis added).

Noting that air quality damage can occur "incrementally," where "thousands of relatively small sources of pollution cause a serious environmental health problem" (221 Cal. App. 3d at p. 720), the *Kings County* Court went on to rule that the "ratio" approach to evaluating air quality impacts is inadequate under CEQA:

We find the analysis used in the EIR and urged by [real party in interest] GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF's "ratio" theory, the greater the over-all problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term "collectively significant" in Guidelines section 15355 and the analysis must assess the collective or combined impact of energy development. The EIR improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.

221 Cal. App. 3d 721.

The *Kings County* ruling applied to the EIR's analysis of cumulative impacts, and directly invalidates Caltrans' use of the EPA regional transport threshold to evaluate cumulative impacts. In this case, however, Caltrans' transgression is compounded and made even more flagrant by the fact that it has used a forbidden cumulative impacts approach, that only looks at interstate transport effects, to examine project-specific impacts. If a "ratio" approach is not adequate to evaluate cumulative impacts, it is doubly inadequate where, as here, it is improperly used to evaluate project level impacts. Casting project level impacts as a fraction of regional emissions is even more misleading and inadequate as an informational approach than doing so when evaluating cumulative impacts. As explained above, the SEIR wrongly attempts to foist off a regional, cumulative impacts analysis as a project-specific analysis. The fact that the analysis is not valid as a cumulative impacts approach under CEQA only serves to

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highlight and emphasize the deficiencies inherent in trying to apply Caltrans' regional approach to determining the significance of emissions on a project-specific level.

The 1% of mobile source emission budgets threshold also is a forbidden *de minimis* threshold, in that it characterizes impacts from the interchange/hotel-casino as so small as to be insignificant. Such an approach, if it ever was valid, was ruled non-compliant under CEQA in *Communities for a Better Environment v. Calif. Resources Agency*, 103 Cal. App. 4th 98 (2002) (the "CBE" case). In *CBE*, relying on the *Kings County* ruling the Court of Appeals found that CEQA guideline section 15064(i)(4) was invalid and inconsistent with the underlying purposes of CEQA. That section allowed the incremental impacts of a project to be determined not cumulatively significant if they were "so small" that they make only a "*de minimis*" contribution to a significant cumulative impact, i.e. where "environmental conditions would be the same whether or not the proposed project is implemented." The Court found that a *de minimis* analysis was subject to the same infirmities as a "ratio"-type analysis. Section 15064(i)(4) has since been rescinded by the Resources Agency, thus completely eliminating the availability of any *de minimis*-type analysis such as Caltrans' small-percentage of regional emissions analysis.

The only proper method for evaluating air quality impacts of a project is to refer to the laws and regulations established under the state and federal Clean Air Acts that define specific thresholds for requiring emissions reductions from individual sources in nonattainment areas. Any other approach is an abuse of discretion. The most obviously applicable such thresholds are the new source review offset thresholds in the El Dorado County AQMD rules, which are used as the significance thresholds in the County's CEQA Guide.

The EPA Eastern Ozone Transport Threshold does not take California's more stringent State Ambient Air Quality Standards into account. The EPA NOx SIP Call and CAIR regulations determined the significance of interstate emissions solely with regard to the national ambient air quality standards, and gave no heed to and did not account for California's own ambient air quality standards. The NOx SIP Call was based solely on attainment of the national 1-hour ozone standard; the CAIR regulation was based solely on attainment of the national 8-hour zone standard (and also the national PM_{2.5} standard). As explained above, CEQA (Appendix G to the Guidelines, in particular) requires that the significance of air impacts be gauged in light of state standards. This omission is particularly egregious because the counterpart state ozone standards are more stringent such that any evaluation of significance using a purely federal criterion

18 Cont.

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focused only on attainment of federal standards, as was done in the SEIR, is inadequate as a matter of law.

18 Cont.

9. The EPA Regional Transport Threshold is scaled improperly, is overtly biased to produce favorable results, and misleads the Public.

Because the SEIR erroneously uses a federal interstate transport threshold designed to evaluate gross quantities of emissions moving between states, the level of the threshold used in the SEIR is scaled improperly for evaluation of project level impacts. Table 2 below compares Caltrans' 1% of total mobile source emissions budgets threshold with other operational significance thresholds that were created specifically for the purpose of evaluating project impacts under CEQA by agencies with discrete air quality expertise and authority in the areas impacted by the Rancheria project:

Table 2		
Comparison of Thresholds (lbs/day)*		
	ROG Threshold	NOx Threshold
Caltrans – SEIR (BURDEN 7F)	626	1,227
Caltrans – SEIR (BURDEN 2002)	820	1,500
El Dorado AQMD ²¹	82	82
Sacramento Metro AQMD ²²	65	65
Bay Area AQMD ²³	80	80
Yolo-Solano AQMD ²⁴	82	82

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*Lbs/day obtained by multiplying tons/day emission budgets in Tables 5.5-6 and 5.5-7 in SEIR by 2000 to obtain lbs/day, and then multiplying the result by 0.01 to determine 1% threshold.

Table 2 shows that the Caltrans' thresholds are about an order of magnitude (10 times) higher for ROG and about 20 times higher for NOx compared to other established CEQA criteria applicable in the Bay Area – El Dorado County corridor where traffic-

21 See: http://www.co.el-dorado.ca.us/emd/pdf/Chapter3_RF6.pdf, at p. 5.

22 See: <http://www.airquality.org/ceqa/index.shtml#Thresholds>.

23 See: http://www.baaqmd.gov/pln/ceqa/ceqa_guide.pdf, at p. 16.

24 See: <http://www.ysaqmd.org/planning-info.php>, CEQA Handbook, p. 6.

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related emissions from the Rancheria will primarily occur. Caltrans' thresholds are also far in excess of other potentially relevant yardsticks (noted above) such as the San Joaquin Valley indirect source applicability criteria, the offset or BACT thresholds used in local AQMD new source review rules, or even the CARB intrastate transport criteria. It is evident that Caltrans has knowingly selected a threshold that will yield favorable results. Caltrans' use of an EPA interstate transport significance criterion gives the false impression that there is a large margin of safety between the threshold and project emissions, when in fact the emissions grossly exceed standard, established CEQA project-level criteria set by all of the cognizant air pollution control agencies in the impacted area. The significance criteria used by the AQMDs shown in Table 1 are uniformly derived from major source offset criteria in the federal Clean Air Act and the California Clean Air Act, and are designed to protect air quality by requiring offsets (mitigation) consistent with local attainment plans. Caltrans' 1% of mobile source emission budgets threshold, on the other hand, is completely without precedent and was plucked out of a federal interstate-level analysis for the opposite coast that has no relevance to California air quality, and no relevance to evaluating emissions at the project level.

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D. The SEIR Must Include Revised, Up-dated Mitigation Measures for Asbestos Emissions.

In several places, including secs. 5.5-1, 5.5-2, and 5.11-3, the SEIR refers to possible asbestos emissions during the construction phase, and states that no additional mitigation beyond the measures and requirements described in the draft EIR is necessary. The mitigation described in the DEIR consists of compliance with Chapter 8.44 of the County's Naturally Occurring Asbestos and Dust Protection Ordinance, and generally related AQMD Rules 215, 224, 229 and 300.

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Asbestos emissions are potentially a major hazard in El Dorado County. See the AQMD website at:

<http://www.co.el-dorado.ca.us/emd/apcd/asbestos.html>

The construction footprint for the interchange and the hotel-casino overlies an area of the County that has been identified as having asbestos-bearing soils. The Asbestos Review Map on the AQMD website at

<http://www.co.el-dorado.ca.us/emd/apcd/PDF/Map.pdf>

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indicates that asbestos soils exist or are likely on portions of the tribal property where the hotel-casino and its related appurtenances (parking garage, parking lots, internal roads, etc.) will be built and on the U.S. 50 right of way where interchange construction will occur.

Since preparation of the DEIR, additional asbestos mitigation and abatement measures have been adopted by the County and the California Air Resources Board, and the County requests that Caltrans also commit to comply with all of these measures as mitigation in the final EIR on this project, on both the interchange and hotel-casino sites. The additional measures consist of the following:

- CARB Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations, 17 CCR 93105
- CARB Asbestos Airborne Toxic Control Measure for Surfacing Applications, 17 CCR 93106
- El Dorado County's Naturally Occurring Asbestos and Dust Protection Ordinance, as last amended 2003
- El Dorado AQMD Rule 223-2, Fugitive Dust-Asbestos Hazard Mitigation, and the associated fugitive dust rules, Rules 223 and 223-1.

The U.S. EPA NESHAP for asbestos, 40 CFR Part 61, Subpart M, should also be complied with, as applicable. If these measures are met, no visible emissions will be allowed at the point of origin or at the construction area boundary. The County requests that Caltrans communicate with the AQMD prior to and during construction so that the AQMD may monitor compliance.

E. Air Quality Impacts Conclusion.

The County respectfully requests that Caltrans rescind and revise the SEIR to identify a proper project-specific emissions threshold for ROG and NOx emissions from the project, in lieu of the clearly erroneous EPA eastern ozone transport significance threshold. Because the identification of the applicable threshold is so critical to complying with the Court of Appeals decision, merely changing the criterion in a final EIR is inadequate; the SEIR must be re-written. As noted above, the County believes that use of its AQMD significance criteria must be used in any revision to the SEIR. At a minimum Caltrans must use a project-specific significance criterion that is properly scaled for determining the significance of individual project impacts; any such criterion would have to be reasonably consistent with or based on precedents used by CARB or air districts.

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III. Traffic

CEQA requires that all significant impacts of the project be identified in the EIR. Caltrans has adopted a methodology in the Supplemental EIR that purposely circumvents this requirement by failing to account for the following issues when assessing traffic impacts of the project on US-50:

1. The Supplemental EIR does not consider the project-opening year of 2009, when existing information presented in the EIR clearly demonstrates that the level of service (LOS) will be "F" and traffic from the project will worsen conditions that exceed the significance criteria established in the EIR.
2. The Supplemental EIR ignores new information on the project's impacts on US-50 congestion submitted to Caltrans within the past 6 months, which shows the project will cause level of service "F" conditions on US 50, west of the East Shingle Springs Drive Interchange the day it opens. It also shows that the proposed auxiliary lane mitigation east of East Shingle Springs Drive would not mitigate this deficiency.

By avoiding these issues, Caltrans fails to disclose to the public what every commuter on US-50 already knows - congestion is rapidly getting worse and there is insufficient capacity to handle the added traffic from the project without exceeding the significance criteria established in the EIR. Instead, Caltrans conceals this truth behind an analysis of impacts for the existing conditions (year 2000) and cumulative conditions (year 2025) using outdated forecasts and data that are woefully out of date (circa 1998/1999).

With regard to the first issue, the EIR relied on Caltrans' "State Route 50 Transportation Concept Report" (hereafter referred to as the Concept Report) to establish congestion significance criteria for the segment between Sacramento and Placerville. The EIR determined that level of service (LOS) below E (i.e., "F") would be considered an unacceptable condition. To illustrate the severity of forecasted traffic congestion along US-50 and the need to maintain an LOS of E or better, the EIR presented the following quote from the Concept Report, "The level of service for the entire segment is expected to drop to "F" by the year 2007." The EIR then presented analyses of traffic congestion significance for existing conditions (year 2000) and

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cumulative conditions (year 2025). Those analyses showed that the project would have no significant impact on traffic congestion under existing conditions, but that it would have a mitigable impact under cumulative conditions. The Rancheria Interchange was scheduled in the Transportation Improvement Program (TIP) for a project-opening year of 2005 and the supporting transportation conformity analysis addressed emissions in 2005, 2015 and 2025.

The SEIR evaluates the congestion significance of two new Alternatives (D & E) for the same existing and cumulative conditions (years 2000 and 2025) and transportation conformity is determined to be unnecessary. The significance of project specific traffic-related ROG and NOx emissions are assessed "for project opening year of 2009." There are several inconsistencies between the analyses in the EIR and SEIR and within the SEIR. First, the years in which emissions and traffic significance are assessed in the SEIR are inconsistent. Second and more importantly, the year in which the project is scheduled to open is 2009, which is two years beyond the year 2007, the year the Concept Report forecasts congestion along US-50 will "drop to F." Despite this finding, Caltrans claims in the Supplemental EIR that the project will not cause traffic along US-50 to exceed LOS "F." Since traffic from the project in 2009 will add to traffic already operating on US-50, which will already be at LOS "F" starting in 2007, how is it possible for the project to not further deteriorate the LOS level beyond the LOS "F" condition that the EIR defines to be "unacceptable"? The SEIR findings are fundamentally inconsistent with (a) the Concept Report forecasts and (b) the congestion significance criteria established in the EIR. These inconsistencies cannot be resolved without a new traffic analysis and related assessment of emission impacts.

23 Cont.

With regard to the second issue, El Dorado County commissioned Dowling Associates, Inc. a well known traffic engineering firm that works as a contractor for both the County and Caltrans among many other agencies, to update the Traffic Operations Analysis prepared by David Evans and Associates on August 8, 2001 for the Shingle Springs Rancheria with more current information. The results of Dowling's analysis were documented in a 14-page memorandum to the undersigned on June 10, 2005. El Dorado County forwarded a copy of the analysis to Caltrans Director, Will Kempton in Fall 2005.²⁵ Key findings from that analysis are as follows:

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²⁵ Copy attached. Caltrans' public insistence that it cannot consider new information is out of step with the project proponent's plans. The Shingle Springs Band has already signaled its intentions to increase the number of slots at the Rancheria. See Attachment. This alone will increase traffic figures from those analyzed in connection with the EIR/EA. In other words, while Caltrans continues to view this project as driven by the traffic from a 2,000 slot casino, the Shingle Springs Band sees the project as being larger thus casting into doubt all of Caltrans' traffic figures and requiring additional environmental review.

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- The David Evans report did not evaluate a sufficiently long section of the US 50 freeway. Their analysis stopped short at the East Shingle Springs interchange. They did not consider the impacts of the casino on freeway operations west of that interchange. Their proposed mitigation measure, an eastbound auxiliary lane between the East Shingle Springs Drive Interchange and the proposed Rancheria (Casino) interchange, is consequently inadequate.
- Recent traffic counts (summer 2004) indicate that existing plus project will cause level of service "F" conditions on US 50, west of the East Shingle Springs Drive Interchange. The proposed auxiliary lane mitigation east of East Shingle Springs Drive would not mitigate this deficiency.
- David Evans based their trip generation estimates on information available back in 2001. These estimates are not supported by more recent studies of the Thunder Valley Casino or by other traffic studies of Indian gaming casinos in California. Updating the David Evans analysis with the new trip generation rates would cause the analysis to show that the proposed auxiliary lane is not sufficient to fully mitigate the impacts of the project on US 50 freeway operations under either existing conditions or future 2025 cumulative conditions.
- The David Evans pass-by trip assumptions for the casino project are not supported by other traffic studies of Indian gaming casinos in California. Specifically, the traffic study for the Thunder Valley Casino on State Route 65 near Interstate 80 did not incorporate a reduction for freeway pass-by trips in its analysis. Traffic studies of other Indian gaming casinos in California also have not included a pass-by trip reduction. In addition, the David Evans 40% of casino trip generation pass-by reduction appears to directly conflict with the 8% of US 50 traffic capture rate estimate developed by the USI market analysis for the Shingle Springs casino.
- It is our recommendation that the David Evans analysis be extended westward to identify and develop mitigation measures for all of the sections of US 50 that are impacted by the project. The traffic counts, forecasts, trip rates and pass-by assumptions should also be updated to more accurately represent the likely traffic impacts of the proposed casino project.

24 Cont.

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By deliberately suppressing and/or ignoring the above new information, Caltrans made findings in the SEIR that the project would have no significant impacts on US-50 congestion levels. Clearly this finding is contrary to the information presented above and fails to comply with new information requirements specified in the CEQA Guidelines, sections 15162 and 15163. The only possible remedy is for Caltrans to prepare a new analysis of both traffic and related emission impacts and circulate the results for public comment.

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In summary, Caltrans is well aware that traffic from the Rancheria Interchange will significantly impact congestion levels on US-50. This is evident from existing information presented in the EIR and new information provided more recently to Caltrans. No notice of this information was contained in the SEIR. Failure to disclose this information and properly assess related mitigation requirements constitutes a severe CEQA violation that must be remedied.

26

At the request of El Dorado County, Dowling and Associates prepared an update to the traffic analysis cited above.²⁶ Data on US-50 traffic counts were obtained for 2005 and 2002 between Ponderosa Road and Greenstone Road. An analysis of the data shows that over that three-year period traffic has been growing at an average of 8% to 10% per year. Applying a 9% per year increase to the Caltrans Summer 2004 rates and adding in the trips generated by the Rancheria (per the Evans report), Dowling estimated summer traffic volumes in 2006. The results indicate level of service (LOS) "F" traffic would occur on both eastbound and westbound sections of US-50. Specific sections impacted include:

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- Eastbound traffic between the Rancheria and Greenstone Road during the weekday pm peak hour;
- Eastbound traffic between Ponderosa Road and East Shingle Springs Drive during the weekday pm peak hour;
- Westbound traffic between the Rancheria and East Shingle Springs Drive during the Saturday peak hour; and
- Westbound traffic between Ponderosa Road and East Shingle Springs Drive during the Saturday peak hour.

26 Memo to Michael V. Brady, "Single Springs Casino, Additional Freeway & Interchange Impact Analysis," dated June 27, 2006. Copy attached.

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According to Dowling, the following measures would be required to mitigate the Rancheria traffic impacts to meet the acceptable concept level of service "E" established in the EIR.

1. Construct 3rd eastbound mixed-flow through lane from Ponderosa Road to Greenstone Road. (An HOV lane would not be sufficient because the demand is about 20% greater than the capacity. There are not enough high occupancy vehicles (HOVs) traveling on US 50 to sufficiently off-load the other lanes.). This mitigation is necessary to address opening day impacts of the project on the weekday afternoon peak hour.
2. Construct a 3rd westbound mixed flow through lane from the future Rancheria Interchange to Ponderosa Road. (An HOV lane would not be sufficient because the LOS problem occurs on summer Saturdays.) This mitigation is required to address opening day impacts of the project on the Saturday afternoon peak hour.

David Evans limited the analysis of traffic impacts on US-50 to the immediate vicinity of the proposed Rancheria Interchange (i.e., one interchange east and west of the project). Dowling expanded that analysis to look at LOS levels between East Shingle Springs Drive and Ponderosa Road. The analysis showed higher levels of congestion moving west towards the El Dorado/Sacramento County border. Based on information regarding traffic growth for the entire US-50 segment from Sacramento to Placerville as presented in the Concept Report, it is likely that the unacceptable LOS levels documented in the Dowling analysis between Ponderosa Road and East Shingle Springs Drive will extend further west along US-50. Similarly, it is possible that unacceptable LOS levels extend farther east from Greenstone Road along US-50. Clearly, the congestion levels along this stretch of US-50 will be even worse in 2009, the stated opening year of the project. The only way to determine the extent of the project's traffic impacts and the mitigation required to meet the acceptable concept level of service established in the EIR is to revise the traffic analysis to (a) include current data, (b) quantify impacts on the project opening year and (c) extend the analysis to include all sections of US-50 between El Dorado/Sacramento County Border and Placerville. Without this additional information, the traffic analysis in the SEIR is inadequate, because it fails to address clearly foreseeable impacts.

The Supplemental EIR asserts in Chapter 4 that no changes in Rancheria alternatives, aside from a "No-Build" alternative would affect the selection of the

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"environmentally superior 'Flyover' interchange design." There is no analysis supporting this assertion. Moreover, it cannot be defended. The traffic analysis presented in Appendix B indicates that Alternatives D and E will reduce the number of trips to the Rancheria by over 50%. Despite the large magnitude of the trip reduction, it too asserts, "conclusions about the selected interchange design (the Modified Trumpet Design) and other roadway design elements associated with the project would remain unchanged." Again, there is no analysis backing up this statement.

30 Cont.

A review of the EIR shows that selection of the Modified Trumpet or "Flyover" Design as being "environmentally superior" was largely predicated on the traffic impacts of the diamond interchanges (both tight and wide) relative to the Flyover Design. The only traffic impact identified by Evans for either of the diamond designs was for the tight diamond interchange. Evans found that Saturday peak hour traffic leaving the Rancheria and turning left to go eastbound on US-50 via the tight diamond had a queue storage problem. He went on to say

The excess queue would amount to a single vehicle **and if [the westbound intersection were]** signalized and coordinated with the signal for the eastbound ramps, the signal timing coordination could ensure that the eastbound ramp intersection would provide additional or offset green time to clear the westbound intersection.

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Clearly, if the projected traffic levels for Alternatives D and E in the Supplemental EIR are forecast to be less than 50% of the levels considered in the EIR, the traffic impacts associated with the tight and wide Diamond Designs disappear. A recent analysis by Dowling and Associates²⁷ indicates that the wide diamond alternative (#4) would operate at excellent level of service with no queue storage problems. Similarly, the tight diamond alternative (#3) would operate with also operate with excellent level of service and no queue storage problems if the signals were coordinated with each other.

The downsized hotel/casino alternatives D and E do not require direct freeway ramps and would be fully served by the smaller diamond interchange configurations. Higher capacity direct freeway ramps are not needed to serve the downsized alternatives. The assertion that the Flyover interchange is environmentally superior is unsupported and is contradicted by the significantly improved performance of the smaller diamond designs under the downsized hotel/casino alternatives. It appears that the diamond designs are now the environmentally superior options due to their more

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²⁷ Memo to Michael V. Brady, "Single Springs Casino, Additional Freeway & Interchange Impact Analysis," dated June 27, 2006, cited above.

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compact design. The Supplemental EIR does not address this feasibility of the diamond interchange designs, and is therefore deficient. This deficiency is critical and goes to the heart of the project, and requires revision and re-issuance of the Supplemental EIR for public comment.

32 Cont.

Caltrans' failure to accurately and completely explain the full traffic impacts of the hotel-casino traffic suffers from the same defects that Caltrans recently complained about with respect to a large development project in Tehama County, the Sun City project, which would have similar disruptive effects on the LOS of I-5 in that area. In a February 3, 2006 letter to the director of the Tehama County Planning Department (copy attached), Caltrans' Chief of its District 2 Office of Community Planning said, after noting that "I-5 is the only way into and out of the proposed development," that "The Department's concerns are the impacts the project will have on the transportation system, primarily the I-5 corridor between the cities of Red Bluff and Redding. If not adequately mitigated, this project will destroy the level of service on Interstate 5, bringing it below acceptable levels." The County is concerned about the very same severe impacts on US-50 levels of service for this project. The February 3 letter went on to say "CEQA requires that all significant impacts of the project be identified in the DEIR. If they are not included in the DEIR, or if "new" information is revealed following the release of the DEIR, then CEQA requires recirculation of the DEIR for public review and comment. There are significant impacts to Interstate 5 beyond the study limits of the DEIR, which were not disclosed in the DEIR. These impacts away from the core project area should be clearly identified and the developer should pay for its significant project-direct impacts and fair share of costs toward mitigation of cumulative traffic impacts." These comments by Caltrans explain very well the County's views concerning the inadequate nature of the traffic impacts analysis in the SEIR.²⁸

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IV. Smaller Project Alternatives

The Court of Appeals also directed Caltrans to analyze one or more project alternatives consisting of a smaller casino and hotel complex. While Caltrans does identify two appropriate project alternatives in the SEIR, the accompanying discussion does not contain the necessary level of detail and quantitative analysis required under CEQA. This failure renders the SEIR legally inadequate as a tool for implementing the

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²⁸ It should be noted that DEIR for the Sun City project used the ROG and NOx significance criteria of the Tehama County Air Pollution Control District (137 lbs/day), and determined that those impacts were significant. See: <http://www.tehamacountyadmin.org/Sun%20City%20Tehama%20EIR.cfm>, at sec. 4.3. Caltrans did not object to the use of the APCD's criteria, or insist that EPA's eastern interstate transport 1% of regional emissions threshold be used in its place.

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fundamental goals of CEQA. Additionally, the SEIR fails to choose an environmentally superior alternative pursuant to CEQA Guidelines section 15126, subd. (e)(2).

As the California Supreme Court has explained, "[t]he core of an EIR is the mitigation and alternatives sections." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. An EIR must consider a range of reasonable alternatives to the project which: (1) meet most of the project's basic objectives; (2) avoid or substantially lessen one or more of the project's significant environmental effects; and (3) may be "feasibly accomplished in a successful manner" considering the economic, environmental, legal, social and technological factors involved. *Citizens of Goleta, supra*, 52 Cal.3d at p. 566; see *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 400; *CEQA Guidelines*, § 15126.6, subd. (d). "Absolute perfection is not required; what is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned." *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors of Orange County* (1982) 134 Cal. App. 3d 1022, 1029, quoting *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal. App. 3d 893, 910.

34 Cont.

Furthermore, an EIR must include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. *CEQA Guidelines* § 15126.6, subd. (d). The analysis must be specific enough to permit informed decision making and public participation. *Laurel Heights Improvement Association, supra*, 47 Cal.3d at p. 406. In short, the project alternatives section must provide enough information to allow the public and decision makers the ability to evaluate the environmental merits of the identified alternatives. This is exactly where the SEIR fails.

The critical flaw is that the discussions of Alternative D and Alternative E do not contain meaningful, quantitative, and detailed analyses of the resulting environmental impacts. Rather, the SEIR consistently and simplistically provides that, because Alternatives D and E are smaller than the proposed project, any impacts would necessarily be either the same or less than the proposed project. An overview of the SEIR's treatment of the traffic and drainage impacts for Alternatives D and E illustrates this approach.

Section 5.4 -1 of the EIR analyzes impacts associated with the Existing Plus Project - Ramp Merge/Diverge Operations. This section provides that the supplemental traffic analysis prepared for Alternatives D and E shows that both alternatives would

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generate fewer trips than the proposed project. This section further provides that the proposed project would result in acceptable operations at the freeway ramp merge/diverge areas under all peak hour scenarios. This section then concludes that, because Alternatives D and E will produce less traffic, both alternative scenarios would necessarily result in acceptable operations. Thus, any increased traffic associated with Alternatives D or E would be a less than significant impact.

The SEIR follows the same analytical formula when addressing impacts on peak flow drainage in section 5.13 -1. This section first provides that, because the type of interchange would remain the same for Alternatives D and E (as for the proposed project), the peak flow caused by Alternatives D and E would be the same as the proposed project. Just as with the proposed project, this would not result in a significant impact. Then, this section provides that, because Alternatives D and E would significantly reduce the footprint of the casino/hotel, the amount of impervious surfaces and alterations to surface drainage patterns would be reduced. Rather than quantify how much less of an impact Alternatives D and E would have on the environment, this section concludes that, since the proposed project would be mitigated so as not to create a significant impact, Alternatives D and E would likewise have less than significant impacts on drainage.

35 Cont.

The SEIR's analytical approach frustrates the fundamental purpose of CEQA. By not undertaking a more thorough qualitative analysis of Alternatives D and E, Caltrans robs both the public and the decision makers of the ability to evaluate the environmental merits of the different alternatives. Obviously, as the SEIR concludes, a smaller casino/hotel complex will result in fewer environmental impacts. The information that the SEIR needs to provide but does not is *how much less* pollution, traffic, or other environmental impacts would be caused by selecting Alternative D or E instead of the proposed project. Without this information, the decision makers and the public cannot meet CEQA's goal of choosing a feasible environmentally beneficial alternative.

Additionally, the SEIR fails to identify an environmentally superior alternative as required by CEQA. If the environmentally superior alternative is the no project alternative, the EIR must also identify an environmentally superior alternative among the other alternatives. CEQA Guidelines, section 15126.6(e)(2). The table contained in section 4.3 of the SEIR clearly indicates that the no project alternative is the environmentally superior alternative because it is the only alternative that has no impact at all on the environment. Therefore, SEIR must identify an environmentally superior

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alternative among the other alternatives. The SEIR does not and, thus, violates section 15126.6(e)(2).

36 Cont.

In conclusion, the project alternatives analysis contained in the SEIR completely misses the point, and consequently, is woefully inadequate under the law. CEQA requires that the analysis of project alternatives contain a sufficient level of detail to afford both the public and the decision makers a meaningful opportunity to evaluate alternatives to the proposed project. Here, Caltrans avoids any type of quantitative or detailed analysis by simply concluding that, because Alternatives D and E are for smaller casino/hotel complexes, these alternatives will have no greater impacts than the proposed project.

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V. Inadequate Notice

The County has been prejudiced by Caltrans' failure to make Appendix B ("Supplemental Traffic Review") available for review for the required 45-Day Period. In accordance with CEQA Guidelines sections 15163(c) and 15087, a supplemental EIR is subject to the same public notice requirements that apply to a draft EIR. As specified in Guidelines section 15105(a), the public notice period for a draft EIR, where as here it has apparently been submitted to the State Clearinghouse for review by state agencies,²⁹ is 45 days. Section 1.3 of the Supplemental EIR states that a 45-day public period applies. Caltrans' date of approval of the Supplemental EIR, as indicated on p. i of that document, was May 17, 2006, and Caltrans issued a "Notice of Available/Notice of Public Workshop" on May 18, 2006 setting a comment deadline of July 6, 2006.

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County representatives received actual notice that the Supplemental EIR had been published on May 18, 2006. On that day the County located the Supplemental EIR on the Caltrans website referenced in the May 18 notice. Appendix B, entitled "Supplemental Traffic Review," was missing. The County continued checking the Caltrans website for Appendix B on a regular basis, and did not find it there until June 6, 2006, when it appeared without explanation or acknowledgement that it was released late. Subsequently, in late June, the County mentioned this deficiency to Caltrans and asked for an extension of time, but it was denied. The County therefore had access to Appendix B from June 6 to July 6, a period of only 30 days, and has not been provided the requisite 45 days to review and comment on Appendix B and the portions of the Supplemental EIR text (Sec. 5.4 addressing Transportation/Circulation

²⁹ If the Supplemental EIR in fact was not submitted to the State Clearinghouse, then the applicable public review period is 60 days, and the County has been prejudiced even more.

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impacts and related air quality analysis in Sec. 5.5) that refer to or depend on Appendix B.

Caltrans' failure to make Appendix B available for review in a timely manner has been materially prejudicial to the County. Appendix B contains a substantially revised and updated analysis of traffic impacts used to analyze the impacts of project alternatives D and E. Appendix B has new hotel and casino trip generation rates that were not contained in the draft EIR, and a new analysis applying these rates to the new alternatives. The County needed, but did not receive, the full 45-day comment period to review this data and the associated claims in the text of the Supplemental EIR, and then prepare its analysis and comments. In particular, the County's expert traffic consultants were not given the benefit of the full review period to complete their review and assist the County in preparing its comments. Since the air quality analysis in the Supplemental EIR depends on the traffic impacts, the County's ability to comment on air quality impacts was similarly prejudiced and compromised.

38 Cont.

Under Public Resources Code section 21005 and numerous CEQA court decisions, an EIR is deficient and must be set aside where substantive or material procedural errors have occurred. Failure to make reference materials available is just such an error. See, for example, *Ultramar v. South Coast AQMD* (1993) 17 Cal. App. 4th 689 where the court ruled that failure to circulate the cumulative impacts section of an environmental assessment for full 30 days was necessarily prejudicial. By failing to give the County access to the supplemental traffic analysis in Appendix B for the full 45-day period required by CEQA, Caltrans has denied the County the opportunity for comment to which it is entitled. The County therefore requests that Caltrans open up an additional public comment period of at least 15 days to give the County, and other members of the public, the benefit of a full 45-day comment period to address traffic-related impacts (and any related air quality impacts) of Alternatives D and E.

Conclusion

The SEIR is non-responsive to the Court of Appeals decision and deficient under CEQA. It must be withdrawn.

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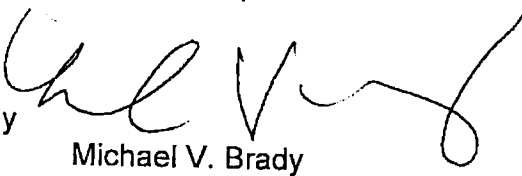
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Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

DIEPENBROCK HARRISON
A Professional Corporation

By 
Michael V. Brady

MVB:lcb
Enclosures

ATTACHMENT A COMMENT LETTER # 2

*SHINGLE SPRINGS CASINO ADDITIONAL FREEWAY
AND INTERCHANGE IMPACT ANALYSIS*



June 27, 2005

Mr. Michael V. Brady
Diepenbrock Law Firm
400 Capitol Mall, Suite 1800
Sacramento, CA 95814
Phone: (916) 446-4469
Fax: (916) 446-4535

**Subject: Shingle Springs Casino
Additional Freeway & Interchange Impact Analysis**

[P04102]

As requested we have reviewed the Supplemental EIR issued by Caltrans in May 2006 and the Traffic Operations Analysis prepared by David Evans and Associates on August 8, 2001 for the Shingle Springs Rancheria Interchange. The following paragraphs answer the questions posed by you and Bob Dulla of Sierra Research regarding these analyses.

1. Updated Freeway Impacts of Casino and Rancheria Interchange

In June 2005 we presented an updated analysis of the casino impacts for the summer of 2004 using Caltrans Summer 2004 counts for the US 50 freeway and the David Evans trip generation and distribution assumptions for the Casino. That repeat of the David Evans analysis using Summer 2004 counts found that the Casino would cause US 50 to operate at LOS F (EB PM peak hour) between Ponderosa Road and East Shingle Springs on the first day the Casino opened (even after assuming that the EIR recommended eastbound auxiliary lane between East Shingle Springs and the Rancheria were built).

At your request we have updated that analysis to the summer of 2006. We obtained from the Caltrans website the latest 2005 and 2002 average annual traffic estimates for US 50 between Ponderosa Road and Greenstone Road. We found that over those three years traffic has been growing at the average rate of 8% to 10% per year. Applying a 9% per year increase to the Caltrans counted Summer 2004 volumes, and adding in the trips generated by the Casino (per the David Evans report) results in the peak hour volumes and level of service shown in the figure below.

The following mitigation measures would be required to mitigate the level of service to "E" or better:

1. Construct 3rd eastbound mixed-flow through lane from Ponderosa Road to Greenstone Road. (An HOV lane would not be sufficient because the demand is about 20% greater than the capacity. There are not enough HOV's on US 50 to sufficiently off-load the other lanes.). This mitigation is necessary to address opening day impacts of the project on the weekday afternoon peak hour.

Shingle Springs Casino SEIR Traffic Analysis

2. Construct a 3rd westbound mixed flow through lane from the future Rancheria Interchange to Ponderosa Road. (An HOV lane would not be sufficient because the LOS problem occurs on Summer Saturdays.) This mitigation is required to address opening day impacts of the project on the Saturday afternoon peak hour.
3. Additional mitigations may be required west of Ponderosa Road and east of Greenstone Road on opening day, but our analysis did not extend that far (We need more time to secure the necessary summer count information for these sections of the freeway).

Exhibit 1. Update of David Evans Existing + Project Analysis Using Estimated Summer 2006 Volumes
Uses David Evans Trip Generation with Caltrans Summer 2004 Counts Extrapolated 15% to 2006

WB	vph	LOS	v/c		vph	LOS	v/c		vph	LOS	v/c		
AM	3265	D	93%	East Shingle Springs	3246	D	93%	Rancheria	3272	D	94%	Greenstone	
PM	2850	D	81%		2836	D	81%		2658	C	76%		
SAT	3295	F	105%		3277	F	104%		2914	D	93%		
2-Lanes WB					2-Lanes					2-Lanes			
2-Lanes EB					3-Lanes (w. Mitigation)					2-Lanes			
EB	vph	LOS	v/c		vph	LOS	v/c		vph	LOS	v/c		
AM	2512	C	72%		2496	B	47%		2237	C	64%		
PM	4194	F	120%		4160	D	79%		3899	F	111%		
SAT	3033	D	96%		3005	C	63%		2765	D	88%		

Sources:

Table 21, page 59, and Appendix F of David Evans Report, Appendix K of EIR
Caltrans 2003 Ramp Volumes on California State Freeway System, May 2004, District 03.
Caltrans 2002 and 2005 Volumes on California State Highways (<http://www.dot.ca.gov/hq/traffops/saferesr/trafdata/index.htm>)

2. Requirements for Direct Ramps to Casino

On pages 55 through 57 of the David Evans Traffic Operations Analysis dated August 8, 2001 (Appendix K of EIR), David Evans states that interchange alternatives 3 and 4 (the tight and wide diamond configurations) would operate at level of service “A” and “B” during the AM, PM, and Saturday peak hours if the intersections at the diamond interchange were signalized.

On page 56 David Evans identifies a queue storage problem under Alternative 3 (The tight diamond) on the Saturday peak hour for traffic leaving the casino and turning left to go eastbound on US 50, but they go on to say that: “The excess queue would amount to a single vehicle” and, “If [the westbound intersection were] signalized and coordinated with the signal for the eastbound ramps, the signal timing coordination could ensure that the eastbound ramp intersection would provide additional or offset green time to clear the westbound intersection.”

The wide diamond alternative (#4) would operate at excellent level of service with no queue storage problems, while the tight diamond alternative (#3) would operate with excellent level of service and no queue storage problems if the signals were coordinated with each other.

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Mr. Michael V. Brady
June 27, 2005

Shingle Springs Casino SEIR Traffic Analysis

Thus the new downsized Casino alternatives do not require the direct freeway ramps and could be served by the smaller diamond interchange configurations.

2. US 50 Transportation Concept Report

Caltrans is currently preparing a new US 50 Transportation Concept Report (TCR) but has not yet published it. The current TCR is dated 1998. This report sets level of service "E" as the standard for US 50 from the Sacramento County line to the City of Placerville. The ultimate concept for this section of US 50 ranges from 8-lane freeway in the west to 4-lane freeway in the east, at Placerville.

(Source: <http://www.dot.ca.gov/dist3/departments/planning/systemplanning.htm>).

Please contact me at 916-266-2190 x302 if you have any questions.

Sincerely,

Dowling Associates, Inc.

A handwritten signature in blue ink, appearing to read "Richard Dowling".

Richard Dowling, P.E., Ph.D.
President

ATTACHMENT B COMMENT LETTER # 2

SHINGLE SPRINGS CASINO TRAFFIC REVIEW



June 10, 2005

Mr. Michael V. Brady
Diepenbrock Law Firm
400 Capitol Mall, Suite 1800
Sacramento, CA 95814
Phone: (916) 446-4469
Fax: (916) 446-4535

Subject: Shingle Springs Casino Traffic Review

[P04102]

As requested we have reviewed the Traffic Operations Analysis prepared by David Evans and Associates on August 8, 2001 for the Shingle Springs Rancheria Interchange.

Summary of Conclusions and Recommendations

We have reached the following conclusions.

1. The David Evans report did not evaluate a sufficiently long section of the US 50 freeway. Their analysis stopped short at the East Shingle Springs interchange. They did not consider the impacts of the casino on freeway operations west of that interchange. Their proposed mitigation measure, an eastbound auxiliary lane between the East Shingle Springs Drive Interchange and the proposed Rancheria (Casino) interchange, is consequently inadequate.
2. Recent traffic counts (summer 2004) indicate that existing plus project will cause level of service "F" conditions on US 50, west of the East Shingle Springs Drive Interchange. The proposed auxiliary lane mitigation east of East Shingle Springs Drive would not mitigate this deficiency.
3. David Evans based their trip generation estimates on information available back in 2001. These estimates are not supported by more recent studies of the Thunder Valley Casino or by other traffic studies of Indian gaming casinos in California. Updating the David Evans analysis with the new trip generation rates would cause the analysis to show that the proposed auxiliary lane is not sufficient to fully mitigate the impacts of the project on US 50 freeway operations under either existing conditions or future 2025 cumulative conditions.
4. The David Evans pass-by trip assumptions for the casino project are not supported by other traffic studies of Indian gaming casinos in California. Specifically, the traffic study for the Thunder Valley Casino on State Route 65 near Interstate 80 did not incorporate a reduction for freeway pass-by trips in its analysis. Traffic studies of other Indian gaming casinos in California also have not included a pass-by trip reduction. In addition, the David Evans 40% of casino trip generation pass-by

Shingle Springs Casino Traffic Analysis

reduction appears to directly conflict with the 8% of US 50 traffic capture rate estimate developed by the USI market analysis for the Shingle Springs casino.

5. It is our recommendation that the David Evans analysis be extended westward to identify and develop mitigation measures for all of the sections of US 50 that are impacted by the project. The traffic counts, forecasts, trip rates and pass-by assumptions should also be updated to more accurately represent the likely traffic impacts of the proposed casino project.

Summary of David Evans Report

David Evans relied upon traffic counts for the US 50 freeway that were conducted in 1999 west of Ponderosa Road. Various assumptions and methods were then used to extend this count to estimated weekday and Saturday peak hour ramp and freeway volumes for the freeway east of Ponderosa Road.

The El Dorado County traffic model for the 1996 County General Plan was used to obtain cumulative no-project volumes for US 50. The model's 2022 forecasts were factored up to obtain 2025 forecasts. David Evans believed that the model's forecasts for US 50 were unreasonably low east of East Shingle Springs Drive, so they developed estimated cumulative volumes for the ramps at this interchange and used those volumes to compute a new forecast for US 50 east of East Shingle Springs Drive.

Trip Generation

The project traffic was estimated by David Evans based on the Urban Systems Marketing Study for the Shingle Springs Casino and reported trip generation surveys of Indian gaming casinos ranging in size from 17,000 square feet to 78,000 square. Since these casinos were much smaller than the proposed casino, David Evans decided that the trip generation rates coming out of these studies were generally too high (3.02 AM, 5.95 PM, 6.73 Saturday) and selected the trips rates implied by the Casino Marketing Study (2.95 AM, 4.95 PM, 6.90 Saturday). The Marketing Study did not produce an AM peak hour estimate, so David Evans took 60% of the PM peak hour rate to get the AM peak hour rate. About 25% of the hotel trips were assumed to be additive to the casino trips. Their final estimate was that the combined 238,500 square foot casino and 250 room hotel would generate 9,918 weekday trips and 14,600 Saturday trips, with 739 trips during the weekday morning peak hour, 1,219 trips during the weekday PM peak hour, and 1,691 trips during the Saturday peak hour for the peak summer month.

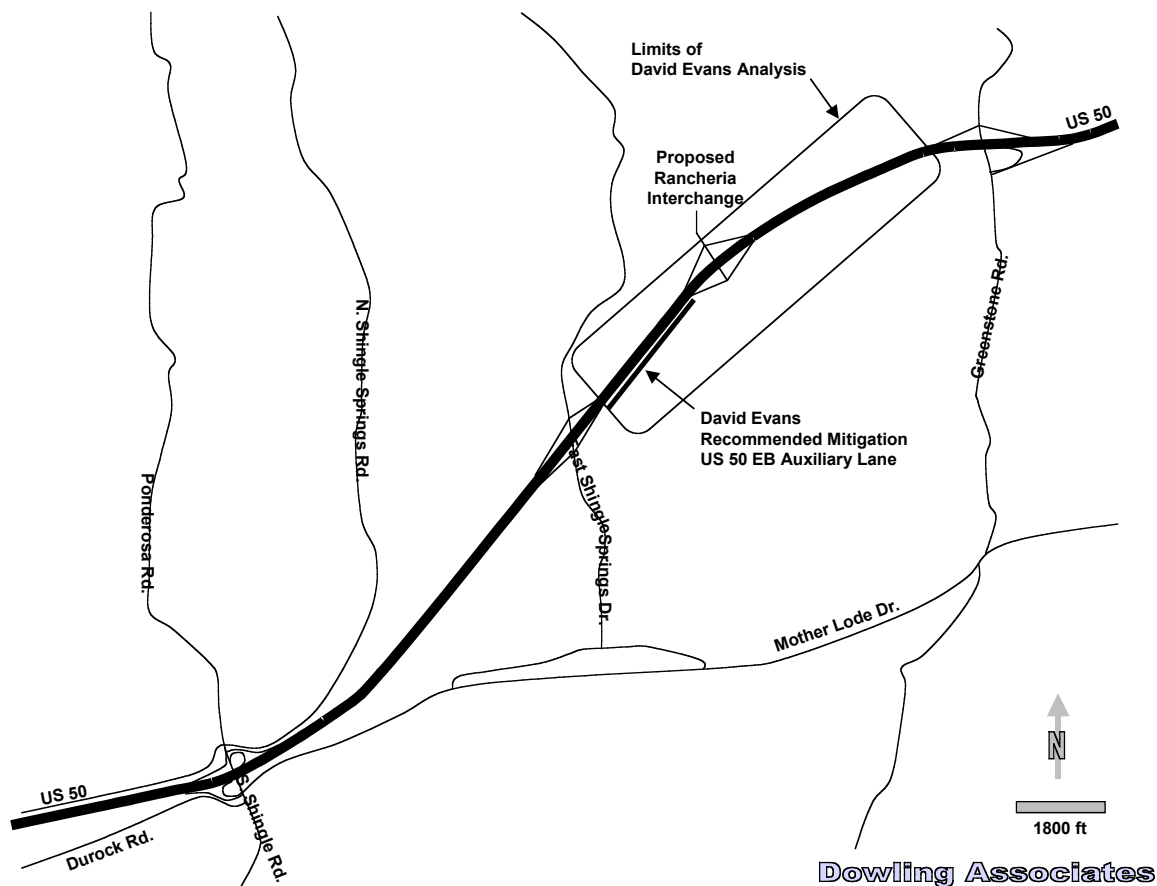
Trip Distribution

The David Evans study assumed that 80% of the project traffic would come from and go to the west, based on the Urban Systems Marketing Study. The remaining 20% would come from and go to the east.

Shingle Springs Casino Traffic Analysis

They noted that the Urban Systems Marketing Study identified that potentially 42.7% of the casino traffic might be “intercepted” traffic, traffic that would have otherwise gone to South Lake Tahoe and/or the Stateline casinos in the absence of the proposed Shingle Springs Casino. Another 15% of the Shingle Springs Casino traffic would be “pass-by” trips (called “diverted”, in their report), trips that were bound for South Lake Tahoe, but which make an extra stop at the Shingle Springs Casino on their way to the lake.

Exhibit 1. Location Map



David Evans adopted a 40% pass-by assumption for the Shingle Springs Casino analysis. Sixty percent of the project trip generation would be new trips added to the US 50 freeway, 40% would be existing trips otherwise passing by the casino, but now stopping at the casino.

Their final estimate was therefore that the combined 238,500 square foot casino and 250 room hotel would add 443 new trips during the weekday morning peak hour, 732 new trips

Shingle Springs Casino Traffic Analysis

during the weekday PM peak hour, and 1,015 new trips during the Saturday peak hour to the US 50 freeway during the peak summer month.

Exhibit 2. David Evans Trip Generation Estimates

AM Peak Hour

		Rate	Trips	40.0% Passby	Net
238,500 Sq. Ft.	Casino	2.95	704	-282	422
250 Rooms	Hotel	0.14	35	-14	21
	Total		739	-296	443

PM Peak Hour

		Rate	Trips	40.0% Passby	Net
	Casino	4.95	1181	-472	709
	Hotel	0.15	38	-15	23
	Total		1219	-487	732

Saturday Peak
Hour

		Rate	Trips	40.0% Passby	Net
	Casino	6.90	1646	-658	988
	Hotel	0.18	45	-18	27
	Total		1691	-676	1015

Source: Table 13, page 38, Shingle Springs Rancheria Interchange,
Final Traffic Operations Analysis, David Evans & Associates, Aug. 8, 2001.

Level of Service Results

David Evans evaluated existing, existing plus project, cumulative, and cumulative plus project conditions for the Rancheria Interchange and the US 50 freeway mainline on both sides of the proposed Rancheria Interchange.

They concluded that no mitigations to US 50 freeway would be required for existing plus project conditions.

For cumulative plus project conditions they determined that the US 50 freeway would operate at level of service "F" in the eastbound direction during the weekday PM peak hour unless mitigated. Their recommended mitigation was to construct an auxiliary lane

Shingle Springs Casino Traffic Analysis

between the East Shingle Springs Drive on-ramp and the proposed Rancheria off-ramp for the eastbound direction of US 50.

They also recommended that a traffic management plan be established and implemented to minimize traffic impacts to US 50 during special events at the casino.

Exhibit 3. David Evans Freeway Analysis Results (Cumulative 2025 Plus Project With Mitigation)

WB	vph	LOS	v/c		vph	LOS	v/c		vph	LOS	v/c	
AM		Not Analyzed		East	3122	E	89%	Rancheria	3148	E	90%	Greenstone
PM		Not Analyzed		Shingle	2572	D	74%		2394	D	68%	
SAT		Not Analyzed		Springs	2922	E	93%		2559	E	81%	
2-Lanes				2-Lanes				2-Lanes				
2-Lanes				3-Lanes (w. Mitigation)				2-Lanes				
EB	vph	LOS	v/c		vph	LOS	v/c		vph	LOS	v/c	
AM		Not Analyzed			2396	B	45%		2137	C	61%	
PM		Not Analyzed			3751	D	71%		3490	E	100%	
SAT		Not Analyzed			3056	C	64%		2816	E	89%	

Sources:
Table 21, page 59, and Appendix F of David Evans Report, Appendix K of EIR

Note: David Evans did not evaluate freeway operations west of the East Shingle Springs interchange.

Issue #1 – Failure to Identify & Mitigate Significant Congestion Impacts Farther Away From the Project on US 50

David Evans limited the analysis of traffic impacts on the US 50 Freeway to the immediate vicinity of the proposed Rancheria Interchange (i.e., one interchange east and west of the project). Their cumulative plus project results showed that the existing 2 lanes in each direction of US 50 would not be adequate to serve forecasted traffic from the Rancheria. They recommended the addition of an eastbound auxiliary lane to mitigate the project impacts within the boundary of their analysis. They failed, however, to consider the impacts of the project farther west of the East Shingle Springs Drive interchange.

Employing the El Dorado County General Plan 2004 model traffic forecasts for the East Shingle Springs Drive ramps, we have extended the David Evans analysis, without modification, to west of the East Shingle Springs Drive interchange. We subtracted the forecasted off-ramp volumes and added the forecasted on-ramp volumes at East Shingle Springs to the David Evans forecasts to arrive at the forecasted US 50 freeway volumes west of East Shingle Springs Drive.

The extended analysis shows that the two-lane section of eastbound US 50, between the Ponderosa Road and East Shingle Springs Drive interchanges would operate at level of

Shingle Springs Casino Traffic Analysis

service “F” during both the weekday PM peak hour and the Saturday peak hour under cumulative (2025) plus project conditions.

Exhibit 4. Extension of David Evans Cumulative 2025 Analysis West of East Shingle Springs Drive

WB	vph	LOS	v/c		vph	LOS	v/c		vph	LOS	v/c	
AM	3192	E	91%	East Shingle Springs	3122	E	89%	Rancheria	3148	E	90%	Greenstone
PM	2672	D	76%		2572	D	74%		2394	D	68%	
SAT	3022	E	96%		2922	E	93%		2559	E	81%	
2-Lanes WB				2-Lanes				2-Lanes				
2-Lanes EB				3-Lanes (w. Mitigation)				2-Lanes				
EB	vph	LOS	v/c		vph	LOS	v/c		vph	LOS	v/c	
AM	2504	D	72%		2396	B	45%		2137	C	61%	
PM	3850	F	110%		3751	D	71%		3490	E	100%	
SAT	3155	F	100%		3056	C	64%		2816	E	89%	

Sources:

Table 21, page 59, and Appendix F of David Evans Report, Appendix K of EIR
Caltrans 2003 Ramp Volumes on California State Freeway System, May 2004, District 03.

The eastbound auxiliary lane recommended by David Evans would have to be extended through the East Shingle Springs Interchange and further westward to fully mitigate the impacts of the project on the US 50 freeway. Our analysis shows that the third lane mitigation must extend at least from Ponderosa Road to the proposed Rancheria Interchange. Our analysis suggests that even this mitigation may not extend sufficiently far enough west to mitigate the project impacts. We have not analyzed other sections of US 50 west of Ponderosa to see how far west the mitigation would have to extend.

Issue #2 – Casino Traffic Will Immediately Exceed Caltrans Congestion Thresholds on US 50

A review of traffic counts collected in the summer of 2004 indicates that most of the growth forecast by David Evans for 2025 has already occurred. This means that US 50 has little capacity to absorb the traffic that will be generated by the Rancheria. Our analysis shows that when David Evans estimates of traffic from the project are combined with the counts observed in 2004, level of service thresholds set by both Caltrans and El Dorado County for US 50 will immediately be exceeded.

Exhibit 5 provides a summary of both mean and maximum counts recorded by Caltrans between Ponderosa Road and East Shingle Springs Road during the summer of 2004. It shows that the highest volumes are recorded in the eastbound lanes during the weekday PM peak hours. A comparison of the counts recorded by David Evans in 1999, the 2004 summer Caltrans counts and the David Evans forecast for 2025 is presented in exhibit 6. It shows that in the 5-year period between 1999 and 2004, traffic growth on US 50 consumed between 53 and 98 percent of the 26 year forecast that David Evans prepared for 2025.

Shingle Springs Casino Traffic Analysis

Clearly, David Evans dramatically underestimated the level of growth that can be expected by 2025.

Exhibit 5. US 50 Traffic Counts Between Ponderosa Rd and East Shingle Springs

Direction	Peak	Mean Peak Hour Volumes (Summer 2004)			
		Weekday	Weekend	All Days	Max
WB	AM	2720	2325	2611	3162
WB	PM	2183	2453	2264	2941
EB	AM	1903	2161	1975	2558
EB	PM	3261	2299	2977	3518

Source: Caltrans 03, May 2005 (continuous counts collected June 1 – August 31, 2004)

Exhibit 6. Comparison of David Evans Forecasts to Caltrans Counts

	D. Evans 1999	D. Evans 2025	D. Evans 1999 – 2025	Growth 1999-2004	% of Growth Used by 2004
WB AM	2206	3086	880	514	58.4
WB PM	1589	2316	727	594	81.7
WB Sat	1691	2465	774	762	98.4
EB AM	1229	2150	921	674	73.2
EB PM	2407	3441	1034	854	82.6
EBSAT	1872	2681	809	427	52.8

Source: Caltrans 2004 = Caltrans 03, June 1-August 31 2004 Counts

Source: David Evans 1999 = Table 4, page 20

Source: David Evans 2025 Cumulative = Table 21, page 59

All volumes shown here exclude the casino project

When the project generated trips estimated by David Evans are added to the mean weekday and Saturday peak hour volumes counted in 2004 the result is that the section of US 50 eastbound, west of the East Shingle Springs Drive Interchange, will operate at Level of Service “F” during the weekday PM peak hour (see Exhibit 7 below). The David Evans recommended auxiliary lane mitigation measure would not extend far enough west to mitigate this deficiency.

Shingle Springs Casino Traffic Analysis

Exhibit 7. Update of David Evans Existing + Project Analysis Using Summer 2004 Counts

WB	vph	LOS	v/c	East Shingle Springs	vph	LOS	v/c	Rancheria	vph	LOS	v/c	Greenstone
AM	2775	D	79%		2756	D	79%		2782	D	80%	
PM	2453	D	70%		2439	D	70%		2261	C	65%	
SAT	2864	E	91%		2846	E	90%		2483	D	79%	
2-Lanes WB				2-Lanes				2-Lanes				
2-Lanes EB				3-Lanes (w. Mitigation)				2-Lanes				
EB	vph	LOS	v/c		vph	LOS	v/c		vph	LOS	v/c	
AM	2165	C	62%		2149	B	41%		1890	C	54%	
PM	3605	F	103%		3571	D	68%		3310	E	95%	
SAT	2633	D	84%		2605	C	55%		2365	D	75%	

Sources:

Table 21, page 59, and Appendix F of David Evans Report, Appendix K of EIR
Caltrans 2003 Ramp Volumes on California State Freeway System, May 2004, District 03.

Issue #3 – Thunder Valley Survey Indicates Traffic Impacts on U.S. 50 Will Be Worse Than Originally Projected

David Evans selected trip generation rates for the proposed casino based on the Urban Systems Marketing Study. They generally discounted the surveys of trip generation for existing Indian gaming casinos in California because the casinos surveyed were less than half the size of the proposed Shingle Springs Rancheria Casino. This was a reasonable approach based on the information available at that time. However, the recent opening of the Thunder Valley Casino provides a similar large size casino for comparison to the Shingle Springs Casino. It is no longer necessary to rely upon strictly a market analysis.

To determine if the marketing survey based trip generation estimate by David Evans was an accurate representation of the actual trip generation of the much larger Shingle Springs Casino, we conducted six days of trip generation counts over a two month period of the 200,000 square foot Thunder Valley Casino off of SR 65 in Placer County, near Lincoln, Ca.

Trip Generation Survey of Thunder Valley Casino

Dowling Associates conducted traffic counts at all of the driveways for the Thunder Valley Casino over 6 days in January and March 2005. The count included weekdays and weekends. This casino was selected for the survey because of its comparable size to the proposed Shingle Springs Casino, and because of its comparable location, near a freeway leading to the Nevada casinos.

The Thunder Valley Casino is located on the north side of Athens Avenue, Just west of Industrial Avenue in Placer County. The casino is about one mile away from the SR 65/Twelve bridges interchange and 6 miles away from the Interstate 80 freeway leading to Reno.

Shingle Springs Casino Traffic Analysis

Thunder Valley is a 200,000 square foot casino with 4 driveways leading to off-street parking surrounding the casino. Two additional driveways, off of Sparta Court serve an overflow/employee parking lot. One of these additional driveways is closed.

The number of vehicles entering and leaving each of the 5 open driveways were counted for two hours each during the weekday AM peak period (7-9 AM), the weekday PM peak period (4-6 PM), and the Saturday afternoon peak period (5-7 PM). The counts were conducted on Saturday January 15, Tuesday January 18, Thursday March 3, Saturday March 5, Wednesday March 9 and Saturday March 12, 2005.

The exhibit below shows the results of these driveway traffic counts for the Thunder Valley Casino. The average trip generation for the Thunder Valley Casino was 486 AM peak hour and 1012 PM peak hour vehicle trip ends for a weekday, and 1,653 vehicle trip ends for a Saturday peak hour.

Since the counts were performed in January and March, and it was desired to obtain trip generation rates for the peak gaming months of May, July, and August, the traffic counts conducted in non-peak months were adjusted for seasonal variation. Based on the article "Gaming Casino Traffic", in the ITE Journal, March 1998, casino trip generation surveys in January and March should be multiplied by the seasonal adjustment factor of 1.1 to obtain trip generation estimates for the peak gaming months of the year.

The seasonally adjusted vehicle trip generation for AM, PM, and Saturday peak hours is shown in the exhibit below. Thunder Valley generates 534 AM peak hour, 1,113 PM peak hour, and 1,818 Saturday peak hour vehicle trip ends during the peak gaming months of the year.

Exhibit 8: Traffic Counts at the Thunder Valley Casino

Summary of Trip Generation Counts			January-March 2005		
Thunder Valley Casino, Placer County, CA			Dowling Associates		
	1/18/2005	3/3/2005	3/9/2005	Average	Seasonal Factor ¹
Weekday AM Peak Hour	488	470	499	486	534
Weekday PM Peak Hour	982	1,057	997	1,012	1,113
	1/15/2005	3/5/2005	3/12/2005	Average	Seasonal Factor ¹
Saturday Peak Hour	1,705	1,719	1,535	1,653	1,818
Note:					
1. The peak gaming months are reported as May, July, and August. Thus, the monthly variation should be applied a multiplier. The seasonal adjustment factor is 1.1 of January and March. ITE Journal March 1998.					

Shingle Springs Casino Traffic Analysis

Dividing the seasonally adjusted traffic volumes by the square footage of the Thunder Valley Casino results in the following trip generation rates: 2.67 trips/thousand square feet for the AM peak hour, 5.57 trips/thousand square feet for the PM peak hour and 9.09 trips per thousand square feet for the Saturday Peak hour.

Trip Generation Estimates For Shingle Springs

Based on the Thunder Valley Casino trip generation study results, the appropriate trip generation rates to use for Shingle Springs should be 2.67 trips for the AM peak hour, 5.57 trips for the PM peak hour and 9.09 trips per thousand square feet for the Saturday Peak hour. These rates are lower than the 2.95 AM peak hour rate used by David Evans (DE&A), and higher than the 4.95 PM peak hour 6.90 Saturday peak hour rates used by DE&A in their analysis of the Shingle Springs Casino. Exhibit 9 below shows the impacts of the improved trip generation rates on the estimated trip generation for the Shingle Springs Casino

Exhibit 9: David Evans (DE&A) and Dowling Trip Generation Comparison

	AM Peak Hour		PM Peak Hour		Saturday Peak Hour	
Study	Rate	Trips	Rate	Trips	Rate	Trips
DE&A	2.95	704	4.95	1,181	6.90	1,646
Dowling	2.67	637	5.57	1,327	9.09	2,168

The forecasted trip generation for the Shingle Springs Casino is 10% lower than the David Evans analysis for the AM peak hour. However the forecasted trip generation for the PM peak hour is 12% higher, and 32% higher for the Saturday peak hour.

Impacts on US 50 Level of Service

The revised trips generated by the project were assigned to the US 50 freeway for two scenarios: existing + project (i.e., Caltrans 2004 counts plus the Thunder Valley based trip generation rates) and cumulative + project (i.e., the David Evans forecast of traffic in 2025 plus the Thunder Valley based trip generation rates). Both scenarios used the same distributions and pass-by volumes employed by David Evans.

Existing plus Project Level of Service Analysis

The existing traffic volumes on the freeway mainline were based on the traffic counts collected in 2004. The project casino-generated trips were calculated using the new casino trip generation rates (from the Thunder Valley Casino) and with the David Evans' pass-by traffic percentages. The ramp volumes on Rancheria Interchange (proposed Casino) were based on the David Evans' report with the corrected Casino trips. The ramp volumes on East Shingle Springs Interchange were based on the ramp daily traffic volumes published by Caltrans District 3 in 2004. The ratios of peak hour traffic to daily traffic on the freeway mainline by direction for each peak hour were applied to the ramp daily traffic counts to obtain peak hour volumes.

Shingle Springs Casino Traffic Analysis

Exhibit 10 shows the result of updated freeway mainline level of service of Existing plus Project conditions. The section of the US 50 freeway between Ponderosa Road and East Shingle Springs interchange would operate at level of service “F” in the eastbound direction during the weekday PM peak hour. Other sections of US 50 farther west might also operate at LOS “F”, but these sections were not studied.

Exhibit 10: Freeway Mainline LOS Analysis of Existing (2004) Plus Project Scenario

WB	vph	LOS	v/c	East Shingle Springs	vph	LOS	v/c	Rancheria	vph	LOS	v/c	Greenstone
AM	2774	D	79%		2755	D	79%		2776	D	79%	
PM	2485	D	71%		2471	D	71%		2270	C	65%	
SAT	3007	E	95%		2989	E	95%		2512	D	80%	
2-Lanes WB				2-Lanes				2-Lanes				
2-Lanes EB				3-Lanes (w. Mitigation)				2-Lanes				
EB	vph	LOS	v/c		vph	LOS	v/c		vph	LOS	v/c	
AM	2143	C	61%		2127	B	40%		1894	C	54%	
PM	3642	F	104%		3608	D	68%		3316	E	95%	
SAT	2749	D	87%		2721	C	57%		2407	D	76%	

Sources:

Table 21, page 59, and Appendix F of David Evans Report, Appendix K of EIR
Caltrans 2003 Ramp Volumes on California State Freeway System, May 2004, District 03.
Thunder Valley Casino Trip Generation Study, Jan-Mar 2005, Dowling Associates

The section of US 50 between East Shingle Springs and Rancheria would also operate at LOS “F” in the eastbound direction if it were not for the auxiliary lane recommended by David Evans. The above exhibit presumes this mitigation is in place for existing plus project conditions.

Cumulative 2025 Plus Project Level of Service Analysis

The result for the cumulative (2025) plus project is that the proposed project will cause freeway level of service to breakdown to level of service “F” at several locations and several time periods.

Shingle Springs Casino Traffic Analysis

Exhibit 11. Cumulative Plus Project LOS With Corrected Trip Generation

WB	vph	LOS	v/c	East Shingle Springs	vph	LOS	v/c	Rancheria	vph	LOS	v/c	Greenstone
AM	3191	E	91%		3121	E	89%		3142	E	90%	
PM	2704	D	77%		2604	D	74%		2403	D	69%	
SAT	3165	F	101%		3065	E	97%		2588	D	82%	
2-Lanes WB				2-Lanes				2-Lanes				
2-Lanes EB				3-Lanes (w. Mitigation)				2-Lanes				
EB	vph	LOS	v/c		vph	LOS	v/c		vph	LOS	v/c	
AM	2482	D	71%		2374	B	45%		2141	C	61%	
PM	3887	F	111%		3788	D	72%		3496	E	100%	
SAT	3271	F	104%		3172	C	67%		2858	E	91%	

Sources:

Table 21, page 59, and Appendix F of David Evans Report, Appendix K of EIR
Thunder Valley Casino Trip Generation Study, Jan-Mar 2005, Dowling Associates

US 50 will operate at level of service "F" in the eastbound direction west of East Shingle Springs Drive, during both the weekday PM and Saturday peak hours. US 50 will also operate at level of service "F" in the westbound direction, west of the East Shingle Springs Drive interchange during the Saturday peak hour. This analysis did not determine how far west the congestion would extend during both the weekday PM peak hour and the Saturday peak hour.

Issue #4 – Implausible Pass-By Estimates Indicate Traffic Impacts on U.S. 50 Will Be Much Worse Than Originally Projected

The David Evans estimate of 40% pass-by trips is implausibly high in light of various data that are available.

First of all, a review of 15 other traffic impact studies of Indian gaming casinos in California found that none of them had discounted the casino trip generation for pass-by, diverted, or intercepted trips. These studies are listed below:

Exhibit 12. List of Traffic Studies Consulted for Pass-By Methodology

Title	Date	Author	Location
Traffic Needs Assessment of Indian Development Projects in the San Diego Region - Spring 2002	March, 2003	County of San Diego, Dept. of Public Works	San Diego County
Gun Lake Casino Final Traffic Study	November, 2001	URS Corporation, Grand Rapids, Michigan	Allegan County, Michigan
Local Impact Analysis of the Proposed Hood River Casino	October, 1998	ECONorthwest, Portland, OR	Portland, Oregon
Beloit Casino and Entertainment Complex	June, 2004	HNTB, Madison, Wisconsin	Beloit, Wisconsin
San Pablo Casino Traffic Analysis Preliminary	January,	Katz, Okitsu & Associates.	Contra Costa,

Shingle Springs Casino Traffic Analysis

Title	Date	Author	Location
Findings	2005		CA
Bridgeport Casino Traffic Impacts on the South Western Region of Connecticut	July, 2001	Buckhurst Fish & Jacquemart Inc. New York, NY	Connecticut
Recalibration of Trip Generation Model for Las Vegas Hotel/Casino	May, 2002	Kimley-Horn, Denver, CO. ITE Journal	Las Vegas, NV
Preliminary Evaluation of the Environmental Impacts of a Resort Casino Proposed by the Federated Indians of the Graton Rancheria at Lakeville Highway and State Highway 37 in Southern Sonoma County, California	July, 2003	The Bay Institute Marc Holmes, Sonoma Land Trust Wendy Eliot, Sonoma Ecology Center Caitlin Cornwall	Sonoma, CA
Traffic Impact Study for the Auburn Rancheria Gaming Facility	October, 2000	Fehr & Peers, Roseville, CA	Roseville, CA
Cache Creek Hotel Development and Casino Expansion Traffic Impact Analysis	May, 2002	CCS Planning and Engineering, Inc. Sacramento, CA	Yolo, CA
Mississippi Gulf Coast Transportation Management Plan for Waterfront Development	June, 1993	Burk-Kleinpeter, Inc.	Gulfport, MS
Buena Vista Casino Development	July, 2000	KD Anderson Transportation Engineers, Roseville, CA	Reno, NV
Gaming Facility	March, 1998	Crawford, Bunte, Brammeier. ITE Journal	St. Louis, MO
Casino Transportation Planning	January, 2003	ITE Technical Committee	
United Auburn Indian Community of the Auburn Rancheria	June, 2000	United Auburn Indian Community	Newcastle, CA

Secondly, the USI, "Shingle Springs, California Gaming and Hotel Market Assessment", October 1999, estimates that only 8% of the existing traffic on US 50 would be captured by the proposed casino¹. The table below compares the difference in the number of pass-by trips estimated using the 40% of casino trip generation used by David Evans and the 8% of existing freeway traffic used by USI.

Thirdly, the David Evans estimate of pass-by trips for the casino is equal to 34% of the total weekday PM peak hour traffic passing over Echo Summit on US 50. The assumed casino pass-by trips are equal to 47% of the total traffic on Echo Summit on weekends. See above table.

Finally, the 2004 General Plan El Dorado County Traffic model predicts that only 637 AM peak hour trips and 637 PM peak hour trips would travel through the county to South Lake Tahoe and Stateline, Nevada. The David Evans estimate of pass-by trips would be

¹ Note: David Evans assumed that 40% of the trips generated by the casino would be existing trips already on US 50 (pass-by trips). The USI marketing study estimated that the casino would draw 8% of the existing trips on US 50. When the two different estimates are applied to the casino traffic and the US 50 traffic, the conflict between the two estimates becomes apparent.

Shingle Springs Casino Traffic Analysis

equivalent to one-third of the AM through trips and two-thirds of the PM through trips passing through El Dorado County on US 50.

Exhibit 13. Comparison of USI and David Evans (DE&A) Pass-By Trip Estimates

Analysis Period	Trips		Pass-By Capture Rates		Pass-By Capture Trips		DE&A
	Casino Generated ¹	On US-50 to/from Tahoe ²	% of Casino Trips (DE&A Method) ³	% of US-50 Trips (USI Method) ⁴	DE&A Method ⁵	USI Method	Method Pass- By Trips as % of US-50 Trips
Weekday AM Peak Hour	739	1,078	40%	8%	296	86	27%
Weekday PM Peak Hour	1,219	1,433	40%	8%	487	115	34%
Saturday Peak Hour	1,691	1,444	40%	8%	677	115	47%

Notes:

- 1 - From David Evans & Associates, "Shingle Springs Rancheria Interchange Traffic Operations Analysis", August 8, 2001, Table 11, p. 33.
- 2 - Caltrans Traffic Volumes for US-50 at S.R. 89 from June 2004. Used count location close to Lake Tahoe to estimate the amount of traffic headed to and from Tahoe on U.S. 50 at the Shingle Springs project site.
- 3 - From David Evans & Associates, "Shingle Springs Rancheria Interchange Traffic Operations Analysis", August 8, 2001, p. 41.
- 4 - From USI, "Shingle Springs, California Gaming and Hotel Market Assessment", October 1999, p. 19.
- 5 - From David Evans & Associates, "Shingle Springs Rancheria Interchange Traffic Operations Analysis", August 8, 2001, Table 14, p. 43.

Reduction of the David Evans pass-by percentage assumption by any amount would significantly increase the estimated impacts of the project on US 50.

Acknowledgements

I would like to acknowledge the technical work of Mr. Chris Ferrell, Mr. Allen Huang and Mr. Ka-Fai Wong, of Dowling Associates on this analysis. I would like to thank Mr. Ron Milam of Fehr & Peers for providing the model information.

Please contact me at 916-266-2190 x302 if you have any questions.

Sincerely,

Dowling Associates, Inc.

Richard Dowling, P.E., Ph.D.
President

ATTACHMENT C COMMENT LETTER # 2

LETTER FROM THE OFFICE OF COMMUNITY

CALTRANS DISTRICT 2

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

P.O. BOX 495073
REDDING, CA 96049-6073
PHONE (530) 225-3369
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RECEIVED**FEB 06 2006****TEHAMA COUNTY
PLANNING DEPT.**

IGR/CEQA Review
Teh-5-32
Sun City (Del Webb)
DEIR
SCH# 2005022038

February 3, 2006

Mr. George Robson
Tehama County Planning Department
444 Oak Street, Room 1 Courthouse Annex
Red Bluff, CA 96080

Dear Mr. Robson:

The California Department of Transportation (Department) has reviewed the Draft Environmental Impact Report (DEIR) and the traffic study submitted for the Sun City Tehama Project. This project, which is of regional significance pursuant to CEQA, is located along the west side of Interstate 5 (I-5) between the Sunset Hills (formerly Snively Road) and Hooker Creek interchanges. The project proposes a planned development to include (DEIR Table 3-2, p. 3.0-10):

- | | |
|---|---|
| * 3,700 residential units (3,475 age-restricted, 225 non-age-restricted). | * 18-hole Golf Course |
| * 642,510 square feet Commercial | * 10 acres of park |
| * 30,000 square feet Medical | * 1,067,220 square feet Public Facilities |
| * 45,000 square foot Recreation Center | * 1,995 acres of Open Space |

We would like to point out that I-5 is the only way into and out of the proposed development. There are no alternate roads, either local or state, into the project site. If the proposed project is approved and developed, it will have significant impacts on many aspects of life in Tehama County and adjoining Shasta County. As indicated in our response to the Notice of Preparation (enclosed), the Department's concerns are the impacts the project will have on the transportation system, primarily the I-5 corridor between the cities of Red Bluff and Redding. If not adequately mitigated, this project will destroy the level of service on Interstate 5, bringing it below acceptable levels.

The Department greatly appreciates the effort of the developer and the County to work out many of the details of the traffic impact study prior to circulation of the DEIR. A Transportation Impact Analysis Report (TIAR) for a development of this magnitude is a significant effort and is very complicated. In addition to the 1,372 pages of text and tables in the TIAR, Caltrans eventually received over 670 computer files that were used by the consultant to generate the output data. The TIAR, as submitted, contains 26 figures and 55 tables and became an entire volume of the DEIR.

During a meeting on August 12, 2005, the County, developer, and Caltrans agreed that all parties would agree on all of the traffic impacts of the proposed development prior to the circulation of the DEIR. Unfortunately this didn't happen and the DEIR was circulated well before all the traffic impacts were mutually identified.

The Department's technical comments to date on the traffic-related impacts and other concerns in the DEIR are enclosed. Based on the complexity, magnitude, regional importance, and significant delays in receiving the information necessary to review the DEIR, we are grateful that the county granted us an extension of time to February 4, 2006 to respond, even though it was less than the 30 days we requested. The Department was not provided sufficient time to thoroughly review this very complex DEIR.

CEQA requires that all significant impacts of the project be identified in the DEIR. If they are not included in the DEIR, or if "new" information is revealed following the release of the DEIR, then CEQA requires recirculation of the DEIR for public review and comment. There are significant impacts to Interstate 5 beyond the study limits of the DEIR, which were not disclosed in the DEIR. These impacts away from the core project area should be clearly identified, and the developer should pay for its significant project-direct impacts and fair share of costs toward mitigation of cumulative

Del Webb Sun City Tehama
February 3, 2006
Page 2

traffic impacts. This fact, along with the difficult manner in which the data is presented, and with the errors and inconsistencies in the DEIR/TIAR, precludes the ability to make sound decisions relating to the project's traffic impacts and mitigation measures.

The Department strongly disagrees with the DEIR conclusion that there is no feasible mitigation for the significant cumulative impacts to Interstate 5 because there are no state or local programs to fund and construct the improvements. There are many acceptable methods to mitigate a project's impacts. While specific projects to mitigate the impacts of the proposed Del Webb Sun City project are not now included or programmed in state and local plans, it is reasonable for them not to be there at this time since specific mitigation projects are supposed to be identified through the Environmental Impact Report process.


The DEIR refers to a development agreement used to fund mitigation improvements for Tehama County impacts and State Highway impacts. This development agreement is not a part of the DEIR and is not available for the Department and the public to review to determine if the mitigations are reasonable. The development agreement should be available for review by the public and the Department if it is referred to in the DEIR. The CEQA Guidelines section 15126(a)(1)(B), specifically state that formulation of mitigation measures should not be deferred until some future time.

The Department believes that the project should be required to pay for project-specific impacts and for its proportionate share of cumulative impacts for I-5 improvements. Once the Traffic Study is corrected, and the true impacts to the transportation system are clearly identified, we would like to work with the County to develop mutually acceptable mitigation measures to address the project's impacts on I-5. The Department strongly urges Tehama County to reconsider the "infeasibility" findings. If they are retained in a Final EIR (FEIR), and approved by Tehama County, the Department would view that approval with the utmost concern.

Thank you for providing us the opportunity for review of this project. The Department will continue to offer the opportunity to work diligently with the County in a positive manner to obtain the mitigation measures needed to reduce the traffic impacts of the project. We look forward to receiving and reviewing the responses to comments and the FEIR.

If you have any questions, please call me or my staff at (530) 229-0517.

Sincerely,



MICHELLE MILLETTE, Chief
Office of Community Planning
Caltrans District 2

Enclosures

c: Caltrans' Legal Division
Shasta County
City of Anderson
City of Redding

City of Red Bluff
State Clearinghouse
Tehama LTC
Shasta MPO

Del Webb DEIR
SCH# 2005022038
Caltrans District 2

ATTACHMENT "A"
Sun City Tehama Specific Plan (Del Webb) Draft EIR Comments

General Comments

- The EIR needs to provide a clear description and discussion of the impacts from the construction, traffic and development phasing of both the residential and commercial development. Clarifications and additional information for this concern have been requested numerous times and remain outstanding. During a meeting on December 23, 2005 between the developer, the County, and Caltrans, it was recognized that the Transportation Impact Analysis Report (TIAR) submitted did not include several of the required elements including mitigation costs, an interchange phasing plan and analysis, an analysis of construction related traffic impacts, details used to evaluate the roundabout alternatives, and clarification of a previously submitted (but not included in the DEIR) fair share analysis of the project's fair (proportional) share of the cumulative impacts. At a meeting on January 11, 2006, the developer said this information would be provided sometime during the week of January 16, 2006. We have never received this requested information.
- Cost estimates for interchange improvements were provided on January 17, 2005. We did not have sufficient time to confirm the estimates.
- A major assumption used in the TIAR was to designate the commercial land use as Shopping Center for the purpose of trip generation rates. Shopping Centers have an inherently lower trip generation rate than would be found with the individual commercial uses typically found in a Shopping Center. The ITE trip generation handbook lists the typical developments found in the Shopping Centers that were used in their surveys to develop the trip generation rates. We note that the first permitted use listed in the Specific Plan (page 3.36, Table 3-7) is for a gas station. A gas station, as well as several other permitted uses listed in the Specific Plan, are not consistent with the ITE Shopping Center designation. It will be necessary to revise any approved traffic study if a gas station, or other inconsistent land use, turns out to be the actual use approved.
- We note that the site plan we recently received from the US Army Corp for a 404 permit indicates mixed-use commercial next to I-5 and Hooker Creek Road. The DEIR shows this same parcel as Public. This would represent a significant change in the assumptions used in the traffic study and a new study would need to be completed to identify the impacts to the Hooker Creek Road interchange.
- Section 4.12 Public Services and Recreation (DEIR p. 4.12-1), identifies the role of the California Highway Patrol (CHP). The impact section does not address the impacts from the increased traffic volumes that represent a significant increase in the evening peak hour traffic and a daily increase in traffic of over 20,000 vehicles from this project alone over the existing 36,500 daily vehicles. The DEIR should address how this impact relates to the related increase in accidents, hazards, and patrol activities expected from the increase in project traffic that will

be required of the CHP. Mitigation Measure 4.12.8a (DEIR p. 4.12-15), addresses police protection services for the Tehama County Sheriff's Department but does not address the increased service needs of the CHP.

- Wire field fencing exists along the I-5 interstate highway right of way frontage. When specific projects are proposed, the Department will provide additional comments in regard to the appropriate barrier that should be installed between the development project and the freeway. The developer will be responsible for replacing the wire fencing with the appropriate barriers or separations, such as chain link fencing or sound walls. Additionally, landscaping should be provided and maintained by the developer/development at interchanges.
- The Sun City Tehama project is not consistent with the principles of smart growth. Specifically, the project is created on undeveloped land that is miles from established communities. The land uses within the development are separated, with the commercial and medical in the northeast section, and housing off by itself. This type of development must bear all of the costs of developing the infrastructure necessary to support the new development, instead of building upon infrastructure that is already in place.

Pertinent Objectives of the Tehama County General Plan Update

CO-2

Manage development and insure that individual(s) action(s) do not adversely impact the health, safety and welfare of the County's citizens

Comment - Congestion on I-5 due to development will compromise the safety and welfare of all that use it, including the citizens of Tehama County. Significant increases in daily and peak hour traffic will increase traffic accidents, hazard, and accelerate congestion unless adequately mitigated.

CO-3

Promote a development pattern which, whenever possible, maximizes the use of existing infrastructure prior to constructing new infrastructure. Develop a land use pattern which, to the maximum extent feasible, minimizes the expenditure of public funds for infrastructure construction and maintenance.

Comment - The existing transportation infrastructure is not sufficient to accommodate this proposed development pattern. New transportation infrastructure will be required. If not mitigated, this development will cost the taxpayers tens of millions of dollars in construction costs, and immeasurable cost in terms of quality of life, frustration, wasted time, and safety.

CO-4

Designate lands for commercial and industrial development which are appropriate for these purposes and allows opportunities for business and industrial firms. Encourage compact development contiguous to existing urban centers, discourage linear and leapfrog development patterns.

Comment - This proposed development is not near any existing urban center. If it were located adjacent to Red Bluff, there could be an alternative transportation system providing several ways to access the cities of Red Bluff or Redding. This project only has access to I-5 creating a high

~~magnitude of concern due to its proposed location.~~ There are many access points to Red Bluff, but only one to Sun City.

CO-5 (T-3)

Develop a land use pattern which, to the maximum extent feasible, minimizes the expenditure of public funds for water, sewer, flood control and road construction and maintenance.

Comment - Sun City will require massive amount of public funds if the transportation infrastructure will remain viable. ~~People will have to travel many miles to get to and from Sun City from any existing urban center.~~

CO-10

Encourage land use patterns which minimizes travel to jobs and services

Comment - ~~People will have to travel many miles to get to and from Sun City from any existing urban center.~~

4.10 - NOISE:

(DEIR, p. 4.10-12) regarding Modeled Noise levels - It appears the analysis utilized draft data. Table 4.10-5 references the Omni-Means Traffic Report of June 2005. The analysis should be revised to use the November traffic data and determine whether any changes result. The Traffic Study projects volumes for mainline I-5 over 100,000 ADT that should be considered in the Transportation Noise impacts analysis. This may affect the conclusion stated in Section 4.10.43 Cumulative Impacts.

We agree with Mitigation Measure 4.10-1 that states the developer shall be fully responsible for funding and constructing all necessary noise attenuation measures to reduce exterior and interior noise levels below the General Plan thresholds. Caltrans will review the detailed acoustical analysis submitted for specific projects for the provision of attenuation measures by the developer such as sound walls. The State will not be responsible for any necessary or desired noise attenuation, due to the proximity of the proposed land uses to the State facility. More simply, the State will not be responsible for building "sound walls" should traffic noise become objectionable.

4.8 - HYDROLOGY:

The DEIR concludes that no significant drainage or erosion impacts are expected to occur since water quality basins and on-site detention facilities are proposed to minimize surface water flows leaving the Specific Plan area. These facilities will be part of a larger stormwater quality control system described in the Specific Plan. Measures discussed in the DEIR to mitigate the potential drainage impacts include the use of detention basins, vegetated swales, vegetated buffer strips, constructed wetlands and filters and other similar features be incorporated into the drainage system (DEIR, p. 3.0-31).

Comment - Caltrans will review the detailed drainage reports submitted for individual projects for the provision of stormwater control and water quality measures by the developer for projects adjacent to the State Highway right of way.

We also offer the following cautionary general comments in regard to hydrology:

- Construction activities and placement of the new buildings and parking areas should not result in any additional surface water (storm water) runoff discharged to the State's highway right of way or to Caltrans' highway drainage facilities.
- No net increase to the 100-year storm event peak discharge into the State's highway right of way or Caltrans' drainage facilities may occur as a result of this project. Further, the developer must maintain or improve existing drainage patterns and facilities affected by this project to the satisfaction of the State and Caltrans. This may be accomplished through the implementation of stormwater management best management practices such as detention/retention ponds or basins, sub-surface galleries, on-site storage or infiltration ditches, as appropriate. Once installed, the property owner must properly maintain these systems. The developer/owner may be held liable for future damages due to impacts for which adequate mitigation was not undertaken or maintained.

1.0 INTRODUCTION

Page

Comment

1.0-2

- Table 1-1, Caltrans should be added for permits and review requirements for any work to be done in the State highway right of way including improvements to the affected interchanges, mainline I-5, and utility crossings.

2.0 EXECUTIVE SUMMARY

- 2.0-10 The document states "The project would generate a total of 40,510 daily trips upon full development of all the allowed uses in 2015 that would leave the Specific Plan Area." Table 24 of the TIAR shows that the number of "external" trips in the 2015 Project Only scenario is 30,085. Which number is correct?

4.13 TRAFFIC AND CIRCULATION

Caltrans DEIR Traffic Review Summary

During a meeting on August 12, 2005, the County, developer, and Caltrans agreed that all parties would agree on all of the traffic impacts of the proposed development, prior to the circulation of the DEIR. Unfortunately this did not happen and the DEIR was circulated well before all the traffic impacts were adequately determined.

The sequential steps in developing a traffic impact study are:

- 1) Determine the trip generation for each element of the proposed development.
- 2) Using the results of 1), develop the trip distribution to and from the development on the transportation network.
- 3) Using the information from steps 1 and 2, utilize accepted computer traffic modeling software to identify transportation facilities that are significantly impacted in numerous different scenarios. The scenarios reviewed in this study include the following:
 - Existing Conditions
 - Short Term (2015) plus 50% Approved/Pending No Project Conditions

- Short Term (2015) plus Project Only Conditions
 - Short Term (2015) plus 50% Approved/Pending plus Project Conditions
 - Long Term (2025) plus 100% Approved/Pending No Project Conditions
 - Long Term (2025) plus 100% Approved/Pending plus Project Conditions
- 4) Determine the transportation infrastructure required to support the traffic volumes generated in each of the scenarios (i.e. mitigation). Determine direct project significant impacts and the required mitigation and the cumulative significant impacts.
 - 5) Estimate the cost of providing the required transportation infrastructure as determined in step 4.
 - 6) Determine the project's direct mitigation and the project's fair share of cumulative mitigation.

At the time of the DEIR circulation, step 1) had been accomplished, and step 2) was close to being completed. Significant work remained to determine the traffic impacts, as was agreed, prior to circulation of the DEIR.

In order to effectively review the information prepared for step 3), on December 2, 2005 Caltrans requested copies of the electronic software files used to distribute traffic to the surrounding area as well as the actual files used to generate the Level of Service (LOS) output data (Note: Caltrans' requested that the electronic software files be submitted with the release of the DEIR in its March 9, 2005 response to the NOP). Only the computer output files were incorporated in the TIAR. There is no reasonable way to verify, using only the tables and figures provided in the TIAR, that the analysis of the project and surrounding development applies the correct volumes from the trip generation calculations and distributes them appropriately. The Traffix Software input files are critical in verifying how the trips are distributed to the system. Distribution errors and/or poor assumptions can dramatically affect the resulting impacts to roadway segments and intersections. Caltrans finally received some of the electronic input files on December 20, 2005 and the remainder of the files on January 4, 2006. However, several of the electronic files received in early January were corrupted and could not be opened.

The remaining working days until the DEIR comments were due, was insufficient to completely review step 3), much less all the remaining elements of the TIAR. It is worth mentioning that the consultant took over a year to develop the study. Based on the study provided and the limited review period, Caltrans does not agree that the data provided to date is adequate to determine the project impacts and assess the proposed mitigations to accommodate the anticipated traffic volumes.

Subsequent Approvals

In order to construct the required mitigation measures within the interstate right of way, a Project Study Report (PSR) must be prepared and approved by Caltrans and the Federal Highway Administration (FHWA). Since the improvements will occur on an interstate, National Environmental Policy Act (NEPA) requirements apply and NEPA clearance will be required. Before Caltrans can approve a PSR, and FHWA will approve a NEPA document, a thorough evaluation of the traffic impacts and the adequacy of the identified improvements to accommodate projected traffic volumes must be completed. Since the traffic portion of the DEIR is incomplete and faulty, we are unable to determine exactly what kind of improvements will handle the development's traffic volumes. It's quite possible the facilities needed to accommodate the projected traffic volumes will be larger (thus more expensive and may require more right of way) than those proposed in the DEIR. If this happens, the County will be responsible for the

construction of those larger facilities and presumably require the developer to finance these more expensive facilities. This is a high risk situation for all parties.

All parties benefit if a thorough review and acceptance of the traffic impact study occurs during (or prior to) circulation of the DEIR. The County and the developer would be in a much better position knowing that Caltrans and FHWA are in agreement with the proposed improvements to facilities within the interstate right of way. Having Caltrans and FHWA's preliminary concurrence allows the County and developer to accurately estimate and incorporate the financial implications of those improvements on the project. It is unfortunate this critical step was not accomplished during (or prior to) the DEIR review period.

Lack of an Alternate Transportation Network/System

Due to the lack of a transportation network in this part of the County, the only viable access for development in the project area is I-5. The local road network is very limited, placing an undue burden on the one and only transportation facility. Without a viable local road network, motorists have no choice but to use the freeway to travel, even if it means entering the freeway at one interchange and exiting at the next. Even in the inadequate form submitted, the Sun City traffic study has shown that I-5 does not have "unlimited capacity" to absorb area development. It is important that the County make good land use decisions if it intends to continue promoting growth in this region. Developing viable alternative transportation facilities is essential.

Approved/Pending Projects

Per discussions with the County, the TIAR includes three approved or pending projects and four developments that are still in the discussion stage without formal applications that are considered for the 20-year planning horizon. The result is that on top of the proposed Sun City development, the study considers 4,700 single-family homes, 40 acres commercial, two 8-pump gas station/mini marts, several restaurants, 80-room hotel, and a 125-space RV park being built in the next 20 years. The County requested these projects be assumed in the cumulative analysis. The reason was to assure the Sunset Hills Interchange would be appropriately sized to accommodate potential General Plan full build out including projects not yet approved or pending. This is sound planning on the County's part for maximum impact assessment for the interchange.

Caltrans does not agree that the entire TIAR be based on speculative projects that have no pending applications or require land use change approvals (General Plan amendments, zone changes, subdivision maps). Potential problems that can occur with this assumption is that future roads (particularly Floyd Lane) are assumed to be built by these speculative developments, but may never occur. If the facilities tied to speculative development are not constructed, the traffic generated from the Sun City and approved/pending projects will use other routes, primarily I-5. Therefore, the basic traffic distribution assumptions in the TIAR would not be valid. This may create more significant impacts than disclosed in the DEIR and could substantially alter the operation of the interchange(s) to the point they fail under this scenario.

Another issue with assuming additional traffic from speculative projects is the impact it has on the fair share analysis. An example is the DEIR's calculation of Sun City's fair share of the required interchange modifications. Sunset Hills Interchange serves as the primary access to I-5 for the Sun City development. If the speculative projects are never constructed, the traffic impacts from the Sun City project (by itself) require significant improvements to the interchange. However, the

DEIR fair share calculation for the Sun City's proportional share of the new interchange (assuming full buildout of all approved/pending and speculative projects) is only 43% (pg 110 TIAR). However, this may be a non-issue for the County and Caltrans if the developer agrees with the mitigation measure making the developer wholly responsible for constructing the improvements needed to accommodate the project with reimbursement from future projects, if they occur. To assess these concerns from another perspective that may reflect more realistic growth, Caltrans requests a 2015 (project only) volume/LOS analysis, 2025 volume/LOS analysis and the fair share calculation be based on only the approved/pending projects, and not the speculative projects. This information needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices.

Furthermore, by assuming the extensive buildout of the local area, the number of external trips from the Sun City development (and approved/pending/speculative projects) that reach I-5 are reduced substantially. This is due to the internal trip matching reductions that are applied to the total trips as a way to account for the local area commercial-residential interaction. These reductions were applied to the Sun City project, approved/pending projects, and the speculative projects. If a more realistic forecast of local area growth was studied, the amount of local area absorption would be lessened and result in an increase in the number of external trips distributed to I-5.

Mitigation

We request that the County meet with Caltrans to develop the mitigation measures necessary to address the project-specific and cumulative impacts of the project on I-5. Caltrans requests that the project be required to pay and construct all direct project specific impacts and a proportionate share of cumulative impacts toward I-5 improvements consistent with CEQA. Feasible mitigation measures can be accomplished in several forms as either direct mitigation (construction of improvements by the developer on I-5), mitigation funding for strategic improvements to the Interstate for those areas significantly impacted by the project, or mitigation funding agreed upon in the terms of a Developer Agreement.

The DEIR states that the applicant proposes to pay a regional traffic impact fee negotiated between the County and the developer to contribute toward the cost of improving regional facilities, including the I-5 Freeway mainline and freeway ramp segments. It has not been demonstrated to the satisfaction of Caltrans that the mitigation funding to address I-5 impacts is adequately included or addressed or that it is infeasible. No draft development agreement has been presented identifying the specific limits of improvements to I-5 to mitigate project-direct impacts nor the project's proportionate fair share for cumulative impacts toward I-5 mainline improvements. Caltrans cannot accept a vague, future agreement as an adequate mitigation measure or a mitigation measure described as, "add one northbound and one southbound lane throughout the entire project study area" without agreeing on the proportionate share impacts or the limits of the project study (Mitigation Measure 4.13-15, DEIR p. 4.13-54). The development agreement should be available for review and comment by Caltrans, the public, and the decision makers.

Since the estimated timeline to buildout Sun City is eight years per the DEIR, the Short Term (2015) Plus Project Only scenario represents direct impacts the project has on the transportation infrastructure. The project-direct impacts are critical for identifying what mitigative improvements the project will be responsible for providing and constructing before project build out. The DEIR should discuss project-direct impacts, and appropriate mitigations for the Hooker Creek, Sunset Hills, and Bowman Road interchanges and mainline I-5.

The project's direct significant impacts to I-5 extend beyond the original study area as indicated in Table 52 of the TIAR. The entire limits of the project-direct significant impacts should be defined and quantified. As described in Table 52, the project attracts and generates traffic affecting the I-5 corridor between the cities of Redding and Red Bluff. More specifically, as described in Table 52, between the Oasis Road interchange and the Diamond/South Red Bluff interchange. This information needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices. Project-direct significant impact mitigations should be primarily the responsibility of this development and occur prior to its buildout.

The TIAR identifies cumulative impacts to the transportation infrastructure in the Long Term (2025) Plus Project conditions. Table 50 identifies five I-5 segments that fall beyond the "cusp of LOS 'C/D'" threshold of significance. However, the study does not identify what improvements are necessary to address these deficiencies. This information needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices. Instead, the TIAR states that, "it is expected that over the next 20 years, Caltrans will program funding for the cost of the projected improvements required....". Furthermore, the study assumes the County may contribute up to 10% of the total cost of a mainline expansion project. Of the County's 10% share, the TIAR determines that this project is responsible for approximately 23%. The TIAR does not include any supporting calculations for this percentage.

State and Federal funding is limited; therefore, we do not agree that Caltrans has the responsibility to modify the interstate to mitigate project impacts required to accommodate development related impacts. Caltrans does provide, as funding allows, improvements needed to maintain the existing interstate facilities. Additionally, Caltrans does not agree that the County is only responsible for 10% of those improvements needed to mitigate impacts from development, or that this project is only responsible to pay its fair share of the assumed County share. This methodology does not adequately mitigate the project's impacts to mainline I-5.

Similar to the above analysis, a Mainline Cost Contribution Worksheet, dated November 17, 2005, was prepared by the consultant and submitted to the County sometime in mid-November. Caltrans received a copy of the worksheet on December 15, 2005. The worksheet was not included in the DEIR. The worksheet uses the same trip loss distribution percentages that were agreed upon in consultation with Caltrans and used in Table 52 of the TIAR to determine the project's share of mainline improvements. Rather than basing the project's share on PM peak hour volumes, the worksheet uses average daily trips (ADT). The 2025 volumes (without project traffic) listed in the spreadsheet are significantly higher than the historic growth on I-5. For example, the ADT at the Cypress Avenue interchange grows from 67,000 to 181,000 over the 20-year period. This is a 170% increase in traffic volumes. Historic growth would yield 94,500 ADT. Using the inflated mainline growth dramatically reduces the project's proportional share. The project's contribution for mainline improvements should be based on realistic growth projections for PM peak hour volumes, the trip loss distribution percentages, and the ultimate mainline I-5 improvements needed for the 2025 cumulative conditions. Using 40% for background growth on I-5 over 20 years and then adding the project traffic volumes would be more realistic. The TIAR needs to determine the required improvements to mainline I-5 for the 2025 conditions and the project's proportionate share, including the calculations. Once this analysis is completed and agreed upon, this information needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices.

Sensitivity Analysis

The TIAR includes a sensitivity analysis as requested by Caltrans. The DEIR also includes this discussion identifying that 14,000 additional daily trips and 350 AM and 1800 PM additional peak hour trips would occur by analyzing the commercial area into four individual shopping centers (DEIR, p. 4.13-37). The reason for this analysis is due to the concern from Caltrans that the study could be underestimating the potential traffic generation, and thus impacts, of the proposed commercial portion of the project. The project is proposing to develop 59 acres for general commercial uses. The Land Use Map shows the commercial acreage divided into four parcels. The TIAR estimates that the four parcels will accommodate a total of 643,000 square feet (or 643 KSF) of commercial footage. Since specific commercial components are unknown at this stage of development, the study combines the four parcels together and calculates the trip generation as though it will operate as a single large 643 KSF shopping center. It has been argued by the consultant that this methodology is justified because the four commercial parcels will essentially function as a single commercial "power center" for northern Tehama County. In other words, because of the rural nature of this area and the size/variety of commercial uses, people are less likely to make repeat trips to the site.

The result is a very low-end estimate of potential impacts. Using information contained in the "Institute of Transportation Engineers (ITE) Trip Generation - 7th Edition," to determine the trip generation for a single 643 KSF shopping center, yields a substantially lower trip generation rate per square foot than four smaller shopping centers. As noted in the TIAR sensitivity analysis, breaking the 643 KSF commercial area into four individual shopping centers (same as the number of parcels on the Land Use Map) sized 161 KSF each, increases the estimated trip generation by 14,210 trips a day (more than a 62% increase above the numbers used in the TIAR). Another example is comparing the Sun City commercial to the two approved/pending 20-acre commercial developments on the east side of I-5. Here are the numbers from the TIAR:

SHOPPING CENTER COMPARISON

	Sun City Commercial (per DEIR)	Two 20-acre App./Pend. Commercial (per DEIR)
Acreage	59	40
Square Footage	643 KSF	420 KSF
Daily Trip Rate	22,754	21,999
Difference	755 trips per day	

As shown in the table, even though the Sun City shopping center commercial is 53% larger than the combined shopping centers of the approved/pending commercial sites, the Sun City site only generates 3.4% more trips. The use of these lower trip generation rates in the DEIR may lead to significantly understating the actual number of trips generated by the commercial portion of the Sun City development and possibly undersizing the needed mitigation.

Measure 4.13-3 in the DEIR, limits the amount of commercial development to 232 KSF without a revised traffic study. At that point, the DEIR suggests a determination would be made if further commercial development will create impacts substantially greater than identified in the TIAR. If so, additional mitigation measures will be necessary. What those mitigations will be and when implemented should be stated.

Mitigation Measure 4.13-3 has several drawbacks. First, if the initial 232 KSF of commercial development generates more trips than anticipated in the EIR, it potentially places the County in a very difficult situation of having to deny further commercial development on commercially zoned properties. A better option would be to provide a "maximum commercial zone" based on the ITS trip generation rates. Then if traffic volumes are shown to be lower than projected in the EIR, the County could comfortably allow a commercial development up to the amount currently proposed.

Secondly, a much more detailed traffic-monitoring plan is needed to accurately define the trigger points at which the traffic volumes are measured, and where they are measured. If, for instance, the initial 232 KSF of commercial development is low trip generating, the future study could potentially allow an additional 411 KSF of undefined commercial development (similar to the original 643 KSF studied in the DEIR). This could be a problem if the remaining 411 KSF of commercial property turns out to have very high trip generation characteristics. Then, the overall buildout of the commercial property could exceed the capacity of the transportation infrastructure.

Another option would be to zone the property for a lower trip generating use, with the opportunity to rezone to commercial if the traffic monitoring reflects that traffic volumes are below anticipated and remaining capacity exists for a specific commercial project.

Considering the potential problems described above, Caltrans requests to be a party to working out the details of a traffic monitoring plan.

Page:

4.13-23 DEIR states in reference to cumulative conditions, three "probable future projects," however, "no applications are on file for the probable future projects . . . nor is there any specific time frame identified when these projects might be built, if at all."

Comments -

- The TIAR DOES give a timeframe by assuming that the projects will be half built by 2015 and 100% built by 2025. The three "probable" projects are: two 20-acre commercial developments east of I-5, 1,500 units north of Sun City (Morgan), and 900 units east of I-5 between Hooker Creek and Sunset Hills.
- This statement in the DEIR is inconsistent with the TIAR. The DEIR states that there are four approved and three probable. The TIAR (p. 26) states that there are three approved/pending and four probable.

4.13-26 Significance Thresholds states, "Consistent with these County and Caltrans policies, LOS C is used in this analysis as the general threshold for acceptable operating conditions for typical weekend AM and PM peak hour periods for intersections and roadways maintained by the County and LOS D is used as the general threshold for weekend days." Comment - The Department's understanding is that the County (not Caltrans) will accept LOS D on a Saturday at interchange terminal intersection(s) as long as queues do not impact mainline.

4.13-28 States, "Because the Bowman/I-5 ramp intersections currently operate below the desired LOS C threshold, and the LOS will be impacted to a greater degree by traffic from related projects, the impact of the project on the Bowman Road/I-5 ramp intersections is considered a significant cumulative impact but not a significant project impact." Comment - For Existing Conditions in the AM peak hour, the northbound (NB) ramps operate at LOS F with 64.8 seconds of delay. In the 2015 Plus Project Only scenario, that

same intersection still operates at LOS F, but with 266.4 seconds of delay (Same type of data exists for the PM and Saturday peaks). Although the LOS does not change, the delay changes significantly due to the project. Substantiate why a 201.6 second increase in delay is not a significant project impact.

- 4.13-33,39 Figure 4.13-7 "External Intersection Volumes – Full Project Development" and Figure 4.13-9 "Intersection Volumes (2025) – No Project" shows the same volume information. Comments – Since the volumes cannot be the same, we believe this is an error. Why are the figure descriptions different than the corresponding figures in the TIAR? The inconsistency of the labeling convention between the DEIR and the TIAR adds to the confusion of understanding the study.

The tables in this chapter (Table 4.13-16 Full Project Build out 2015) are reflective of only the 2015 plus Project condition. They are not Project plus Approved/Pending. The inconsistency of the labeling convention between the DEIR and the TIAR adds to the confusion of understanding the study.

- 4.13-34 DEIR Table 4.13-14 on page 4.13-34 in the ADT for Bowman Road - west of I-5 SB ramps - says ADT is 12,4000.
Comment - Did they mean 12,400?

- 4.13-44 Under the 2025 Cumulative Conditions, I-5 is projected to operate at an unacceptable LOS during at least one peak hour period with the existing four-lane configuration. The DEIR states, "Implementation of Mitigation Measure 4.13-15 would mitigate potential cumulative impacts on the freeway to less than significant levels." Mitigation Measure 4.13-15 proposes to "add one northbound and one southbound lane throughout the entire project study area."

Comments -

It is apparent the impacts from the cumulative conditions extend well beyond the project study area. As a disclosure document to inform the public and the decision-makers of the extent of the project's impacts, explain why this section of the DEIR does not address mainline impacts beyond the study area. Once this information is provided, this information needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices.

The statement that this mitigation would "mitigate potential cumulative impacts on the freeway to less than significant levels" is inconsistent with traffic study which concludes that even with an additional lane in both directions on I-5, the "segments of I-5 north of Sunset Hills Road are projected to operate at LOS "D" or worse on a peak hour basis." Table 50 of the TIAR (pg. 115) shows several segments that will not achieve an acceptable LOS with this mitigation. Please explain.

This mitigation measure does not address the project's significant impact. Once this information is provided, it should be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices.

4.13-47 DEIR Mitigation Measure 4.13-1a on page 4.13-47.

Comment - Suggest changing the wording from "issuance of occupancy permits" to "issuance of building permits" and change the "single-lane roundabout intersections" to "appropriate mitigation that will handle the increase in traffic which may include conventional intersections and traffic signals." While we do not object to the use of roundabouts where they are appropriate, the traffic study that supports this DEIR is insufficient to determine that roundabouts are an appropriate mitigation for the traffic impacts. Caltrans will look forward to working with the developer and the County to properly identify and implement sufficient mitigation.

4.13-49 States that, "This safety advantage has been attributed to the slower traffic speeds entering and traveling through a roundabout, and the division of the pedestrian crossing into two stages, from the sidewalk out to the island in the middle of the roundabout, and then from the island to the sidewalk."

Comment - Pedestrians are never allowed to cross into the center of a roundabout. As stated previously, Caltrans will consider the use of roundabouts as an appropriate mitigation measure at this location, but does not have enough information in this DEIR or appendices to make that determination. The use of traffic signals as a mitigation option will also be considered.

4.13-50 States, "At this time, neither the California Department of Transportation or the County of Tehama has prepared plans, developed a budget or formulated a program to fund improvements to the I-5 Freeway in the vicinity of the Specific Plan Area."

Comment - There are plans in place to make improvements to sections of I-5 that are currently in need of them. However, it is true that there are no prepared plans or budget program in place to handle the mitigation measures that will be needed for the Sun City Tehama specific plan area because until this project was proposed, no improvements were needed, and specifically what those improvements will be should be determined through the EIR process. Unfortunately, the traffic portion of the DEIR contains many inconsistencies and is inadequate for sound decision-making to be able to determine exactly what the project specific impacts or the cumulative impacts will be to I-5 as a result of this project.

APPENDIX 4.13 TRANSPORTATION IMPACT ANALYSIS REPORT (TIAR)**Page****Comment**

p. 1

"The proposed project entails the construction of 3,475 age-restricted single-family dwelling units, 250 non-age-restricted single-family dwelling units, . . ."

Comment - This is inconsistent with the rest of the document, which lists 225 non-age-restricted single-family dwelling units.

p. 2 -- 4

"Without off-site development traffic volumes from Sunset Hills Road east of I-5, the Sunset Hills Road interchange has adequate capacity to allow for the construction of approximately 650 EDU based on a LOS standard of "C" threshold."

Comment - This basically concludes Sun City can develop 650 EDU's without impacting the interchange. According to Table ES-1, this would occur by year 3. However, that does not assume any other buildout in the area or construction traffic. Table ES-2 "Recommended Improvement Summary" shows the need for at least roundabouts by the year 2015. However, that table is not a determination of WHEN those improvements are

truly needed, instead it's an evaluation of the facilities needed at the year 2015. Please clarify these statements/tables and discuss the implications of construction traffic. Once this information is clarified it needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices.

- p. 3 Comment - Improvements to the Bowman Road interchange are listed, but the project's contribution is not listed here. Identify project's contribution to Bowman Road interchange improvements. Once this information is clarified it needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices.
- p. 4 Comment - Table ES-2 or reference to another table needs to include recommended improvements for mainline I-5. Once this information is clarified it needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices.
- p. 5 Comment - Caltrans layout sheets with aerial images are used as base maps on numerous figures in the TIAR - Caltrans did not authorize this use. All references to Caltrans need to be removed from the layouts to eliminate confusion.
- p. 11 Comment - Floyd Lane is not an existing public facility. It should be identified as a private road.
- p. 18 Comment - The Department's understanding is that the County will accept LOS D on a Saturday at interchange terminal intersection(s) as long as queues do not impact mainline.
- p. 19 Comment - The document does not specifically discuss how the level of service of a roundabout is determined. Table 1 shows the level of service criteria for intersections with various control types. Roundabouts should be included in this table or in a separate table.
- p. 23 Table 7 (and corresponding tables throughout the TIAR):
Comment - the I-5 southbound, north of Sunset Hills Road interchange segment is analyzed as a 3-lane facility for the entire segment. The third lane is a truck climbing lane from the southbound truck scales that ends north of the Sunset Hill interchange. Analyzing the full segment as a 3-lane facility yields inaccurate LOS results. This segment should be analyzed as a 2-lane facility or broken into three segments reflecting the 2-lane segment portions north of the scales and south of the scales and the partial 3-lane segment. A weave/merge analysis from the end of the truck-climbing lane to the Sunset Hill Road interchange should also be done.
- p. 25 "Included in the Appendix is the Traffix trip distribution output for the Short Term and Long Term scenarios with and without the proposed project"
Comment - Here's a list of the Traffix files that were included:
- 2015 Plus ½ Local Dev, Minus Project - AM, PM
 - 2015 Plus ½ Local Dev Plus Project - AM, PM, SAT
 - 2015 Project Only - AM, SAT
 - 2025 Plus Local Dev, Minus Project - AM, PM
 - 2025 Full Build-out - AM, PM, SAT

The 2015 Project Only PM is not included in the Appendix.

- p. 30 Comment - The column totals for the Saturday Peak Hour Trips are incorrect.
- p. 31 Table 11 "Approved/Pending Project Local Area Trip Capture - Commercial"
- Comment - the "mainline diverted trip reduction" should be based on the number of commercial trips AFTER subtracting out the locally captured trips.
- A mainline diverted trip reduction of 19% is higher than Caltrans allows without substantiating evidence. During an earlier consultation with Caltrans, the traffic consultant was asked to use a lower percentage. The reference to the ITE handbook is vague at best. Data is included in the ITE handbook regarding pass-by percentages for Shopping Centers. However, the data is subject to scrutiny due to a low correlation factor of 0.37. Please provide substantiating justification to support the higher pass-by rates for this project.
- p. 32 "Trip distribution for the approved/pending projects has been estimated based upon previous traffic impact study projects (Approved/Pending Project 2), existing traffic flow patterns,"
- Comment - The referenced traffic study is not included in the appendix of the DEIR. Please provide the referenced traffic study.
- p. 43,44 Comment - The methodology for using the Shasta County Travel Demand Model is incorrect. Raw model outputs for the year 2025 are being compared to existing volumes to determine a growth rate. The correct use of the model is to compare raw model outputs for the year 2025 with raw model outputs for the year 2005 to determine a growth rate.
- p. 55 Table 21 "Project Local Area Trip Capture - Commercial"
- Comment - The "mainline diverted trip reduction" should be based on the number of commercial trips AFTER subtracting out the locally captured trips.
- A mainline diverted trip reduction of 19% is higher than Caltrans allows without substantiating evidence. During an earlier consultation with Caltrans, the traffic consultant was asked to use a lower percentage. The reference to the ITE handbook is vague at best. Data is included in the ITE handbook regarding pass-by percentages for Shopping Centers. However, the data is subject to scrutiny due to a low correlation factor of 0.37. Please provide substantiating justification to support the higher pass-by rates for this project.
- p. 94 Comment - Item 4 proposes a traffic signal to address the LOS "F" at the Bowman Road/I-5 NB off-ramp, even though the traffic study reports that it does not meet the peak hour warrant. A traffic signal may not be appropriate mitigation if the intersection does not meet signal warrants or the peak hour signal warrant per MUTCD. Describe how a traffic signal would correct the deficiency or discuss other improvements that can correct the deficient facility.
- p. 96 Comment - Item 4 proposes a traffic signal at the Bowman Road/NB I-5 off-ramp, but does not specify whether the peak hour signal warrant has been met. Same comment as previous comment (p. 94).

- p.97, 104 Tables 43 and 46
 Comment – Provide verification that the peak hour signal warrant has been met for proposed signalized intersections identified in the table. A traffic signal may not be appropriate mitigation if the intersection does not meet signal warrants. Describe how a traffic signal would correct the deficiency or discuss other improvements that can correct the deficient facility.
- p. 106 Table 48
 Comment - the table shows 5 freeway merge/diverge locations that will experience an LOS D (density ranges from 28.4-32.6 pc/mi/ln) during the PM peak hour. All of these locations fall beyond the “cusp of LOS ‘C/D’ (28.0 pc/mi/ln)”, but the study indicates this is an acceptable density “...consistent with Caltrans standards...”
 Comment - This comment is not correct. The LOS at these 5 locations is not acceptable per Caltrans TIS Guidelines and fall beyond the “cusp of LOS ‘C/D’” threshold of significance. Therefore, the study needs to identify mitigative improvements to address the deficiencies.
- p. 114 Table 49 “Long Term Plus Project Conditions: Mitigated Intersection Levels-of-Service” lists several intersections under the “Signal Option” as having a “Control Type” as either a two-way or all-way stop control instead of a signal.
 Comment - Is this an error? Please explain what was actually analyzed.
 The “Signal Option” shows three intersections that fall under the jurisdiction of the State that operate at a LOS D during the Saturday Peak Hour. The Department’s understanding is that the County will accept LOS D on a Saturday at interchange terminal intersection(s) as long as queues do not impact mainline.
 The Roundabout Option that includes 2 lane roundabouts and free rights at the Sunset Hills interchange shows that the southbound (SB) ramps intersection would operate at LOS C with 34.8 seconds of delay during the Saturday peak hour. However, at a different intersection with a 1 lane roundabout configuration, 32.1 seconds of delay is shown as operating at LOS D. Please define the LOS criteria for roundabouts. Please provide copies of the electronic Rodel files for this analysis.
- p. 118 Freeway Mainline Segments – Outside Original Study Area
 Comment - The study erroneously states that the “residential and commercial trip distribution was submitted by Caltrans.” A more accurate statement would be to restate the paragraph on page 58 of the study that discusses the consultation that occurred with Caltrans to develop the trip distributions.
 Table 52 needs to list the volume of commercial and residential trips distributed to each interchange.
 The headers for Table 52 are incorrect. Instead of “Project Daily Trip Losses at Each Interchange” it should state “Project Daily Mainline I-5 Trips.”
 The Residential trips and Commercial trips columns appear to be reversed.
 Also states, “Using the trip loss distribution listed above and preliminary traffic volume forecasts along the I-5 corridor”

Comment - It's unclear what traffic volume forecasts are being used for the comparison.

What are the initial project volumes associated with Commercial and Residential that are being reduced at each interchange?

It is unclear whether 8,041 commercial trips at the Bowman interchange represents the traffic south of the interchange or north of the interchange (same comment for all of the interchanges).

Below Table 52, the text summarizes the table by saying that "...9% of the local corridor growth and 6% of the total corridor growth" is attributed to the project. The study does not define the limits of the "local area" and no supporting calculations are provided to verify the percentages stated. Please define the limits of the local area and supporting calculations for the percentages provided.

Based on the data presented in Table 52 and Table 24, the following table shows the daily project volumes occurring at the listed interchanges. These interchanges currently have operational issues during at least one peak hour period. These impacts are unidentified and unmitigated in the DEIR. Once this information is clarified it needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices.

INTERCHANGE	PROJECT DISTRIBUTION		PROJECT VOLUMES AT THE INTERCHANGE			2004 ADT AT THE INTERCHANGE		
	COMM	RES	COMM	RES	TOTAL	NB OFF	SB ON	TOTAL
Hilltop	7%	15%	921	1,571	2,491	9,800	6,000	15,800
Cypress	7%	20%	921	2,094	3,015	6,600	6,600	13,200
S. Bonneyview	7%		921	-	921	5,700	5,700	11,400
Gas Point	14%	1%	1,842	105	1,946	1,900	2,550	4,450

p. 120 The TIAR states, "Assuming project development phasing and the reduced trip generation characteristics of "Active Adult Communities," the EDU threshold for LOS "C" allows for development to year 4"

Comment - Please provide the analysis that supports that statement.

FAIR SHARE CALCULATION

Page

Comment

p. 108-
113

Comment -- The TIAR offers little insight into how the fair share percent was calculated. Based on an email that Caltrans received from Omni Means dated December 23, 2005 and additional data on January 17, 2006, the fair share percentage was calculated from Figure 13 (Project Only Volumes), Figure 21 (Long Term Plus Project Intersections), and Figure 22 (Long Term Plus Project Freeway and Ramps).

The Long Term Plus Project section describes Caltrans fair share methodology, and provides the project's resulting fair share percentage for each mitigation element (example: 7% for Bowman Road interchange improvements). However, the supporting numbers and calculations used to get those percentages are not provided in the study. This information is required for verification purposes.

It appears the PM peak hour was used to calculate the project's fair share. Provide supporting calculations for determining the project's fair share.

Figure 13 (Project Only Volumes) does not take into account the interaction of the trips at the interchange with the Approved/Pending Projects during the full build out condition. The methodology that should be used to determine the project's fair share is as follows:

Figure 21 (Long Term Plus Project Intersections) shows the volumes in the cumulative conditions. Provide a supplemental diagram that shows the Project Only volumes during the cumulative condition.

Use the Caltrans fair share formula to determine the Project's fair share percentage for each mitigation element. The Project volumes to be used in that formula should be derived from the supplemental diagram described in (a) above, Cumulative volumes should be derived from Figure 21, and Existing Volumes should be derived from Figure 13.

The Project volumes have a bigger impact during the Saturday peak hour. The fair share calculation should be based on the Saturday volumes. The difference in percents is 53% proportionate share (using the methodology described in (b) above) versus 50% proportionate share (using the methodology found in the TIAR).

Once this information is clarified and provided it needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices.

OTHER INCONSISTENCIES WITHIN THE TRAFFIC STUDY

- #1 Refer to Attachment #1, "Comparison of Mainline I-5 Traffic Volumes," demonstrates the flaws with the data that is presented in the traffic study. According to the data in the traffic study, there are several locations on I-5 where the "Existing" 2004 traffic is actually higher than the "2015 plus Project" volumes. Please explain.

Also, there are several locations shown where the "2015 plus Project" volumes would actually be lower than what would be obtained by using the "Existing" 2004 volumes and adding the background growth to give 2015 (no project) volumes. Please explain.

According to the methodology described on page 44 of the TIAR, the "Short Term Plus Approved/Pending Projects" volumes were determined by the following process: Apply a 19.59% growth rate to the existing 2004 volumes to establish the year 2015 "background" volumes. Then add the "approved project" traffic volumes to the year 2015 "background" volumes. Following this methodology does not yield the numbers portrayed in the study. Please explain.

The highlighted volumes in Attachment #1 are given as examples of the deficiencies of this traffic study. They do not constitute an exhaustive list of errors. It is reasonable to assume that the other mainline and ramp volumes and resulting LOS presented in Tables 18, 19, 29, 30, 33, 34, 37, 38, 44, and 45 contain errors that were carried forward. A cursory review of the ramp data raised similar questions regarding the data. Because of these fundamental flaws, the results from any analysis would also be flawed. Caltrans is therefore unable to ascertain whether or not the recommended mitigations would be sufficient and cannot make sound conclusions from the data provided.

#2

Caltrans chose one segment of I-5 and one scenario to perform an analysis to determine the magnitude of the errors listed above and elsewhere in our comments. The TIAR shows the following analysis for the I-5 mainline segment listed:

Sun City TIAR Freeway Mainline Segment	# Lanes	PM PEAK HOUR 2015 + PROJECT ONLY		
		Vol.	Density	LOS
I-5 SB, south of Jellys Ferry Road I/C	2	1,869	17.4	B

Caltrans used volumes that were derived from various tables in the document. Changes were also made to the Highway Capacity analysis to reflect corrected inputs mentioned in the above comments. A corrected analysis of this segment of I-5 yields the following outputs:

Caltrans Review Freeway Mainline Segment	# Lanes	PM PEAK HOUR 2015 + PROJECT ONLY		
		Vol.	Density	LOS
I-5 SB, south of Jellys Ferry Road I/C	2	2,502	27.3	D

The result of all the corrections to the data for this one segment for this one scenario is two steps down in the level of service. The level of service for this segment would then need to be considered unacceptable and unmitigated. The potential magnitude of the errors in the traffic study demonstrates that the study is flawed and inadequate for either sound decision-making or a "good faith effort" for CEQA compliance.

#3

An analysis of the proposed roundabout mitigation was included in the Appendix. The analysis was performed using Traffix software. Caltrans does not agree with the use of Traffix software for the analysis of a roundabout. The industry standard for the computer analysis of a roundabout is Rodel. Caltrans expectation for the use of Rodel is that the roundabouts be designed at the 50% confidence level, and then checked for capacity at the 85% confidence level. Please verify.

There appears to be an error with the analysis of the "2015 + Approved/Pending + Project" scenario. The intersection turning movements used for the Traffix analysis do not match with the volumes shown in Figure 17 of the traffic study. A cursory review of volumes at other locations/time periods shows similar inconsistencies. Please explain. Due to the inconsistencies in the data used in the Traffix analysis, any results from that analysis are insufficient for determining the adequacy of the proposed mitigation measures.

#4

The traffic study does not analyze the impacts that the construction traffic will have to the transportation infrastructure. A full analysis including supporting documentation and discussion of phasing of the project is needed. Caltrans has been requesting this data for the past six months. To date, the information has not been provided.

- #5 The traffic study needs to include cost estimates for mitigation measures including both interchanges (which have been provided) and mainline I-5 cost estimates (which have not been provided) and a financing plan. Once this information is provided, this information needs to be incorporated into the body of the DEIR for both disclosure and sound decision making purposes rather than discussed in the appendices.
- #6 An analysis of the Saturday Peak Hour needs to be completed for the Short Term Plus Approved/Pending and the Long Term No Project scenarios.
- #7 Caltrans developed a table similar to Table 52 in the TIAR. However, the volumes differ (see Attachment #2, "Revised Table 52"). Please provide additional documentation outlining how Table 52 was created.
- #8 Caltrans has received differing descriptions from the traffic consultant that prepared the TIAR on how the mainline I-5 2025 forecasted volumes were determined:

On page 81 of the TIAR it states that the "Long Term No Project" volumes were determined by the following process: Apply a 40.14% growth rate to the existing 2004 volumes to establish the year 2025 "background" volumes. Then add the "approved project" traffic volumes to the year 2025 "background" volumes.

At a meeting between the Omni Means, Caltrans, and Tehama County on January 11, 2006 and then again in a memo from Omni Means dated January 13, 2006, Omni Means stated that the year 2025 No Project traffic volumes on I-5 were the "sum of the 40% background growth and the 20% "local" growth with the existing traffic volumes."

Please provide supporting documentation of how the I-5 2015 and 2025 background volumes were determined. Also, please provide detailed documentation that shows that those background numbers were applied consistently throughout the document.

In summary, Caltrans comments serve to support our concerns that the information provided to assess both the project-direct and cumulative traffic impacts is insufficient to make sound decisions from the data provided since without agreement on the actual amount of traffic to be generated it is not possible to determine:

- Whether the stakeholders, primarily the traveling public, public agencies, and the decision-makers have been presented the information needed in a manner that allows sound decision making for transportation facilities. It has been extremely difficult to review the project based on the inaccuracies, inconsistencies, errors, and disjointed presentation of the information between the information provided in the body of the DEIR and two appendices. It is apparent that there is critical decision-making information in the TIAR that has not been presented in a readily displayed form. This critical information needs to be presented in the body of the EIR for sound decision-making.
- That the project traffic scope is adequate. Based on the project's location between two cities separated by 30 miles. It is apparent that the increased traffic volumes from the project will extend far beyond one interchange to the north and one interchange to the south of the project.
- That the proposed mitigation measures are adequate and complete.

- Whether an undisclosed Development Agreement adequately addresses mitigation of the project's proportionate share of State highway impacts to interchanges and I-5 mainline.
- Whether the project's proportionate share toward project-direct and cumulative traffic improvements has been adequately addressed.

ERRORS/INCONSISTENCIES FOUND IN THE ELECTRONIC FILES

FREEWAY MAINLINE ANALYSIS USING HIGHWAY CAPACITY SOFTWARE (HCS)

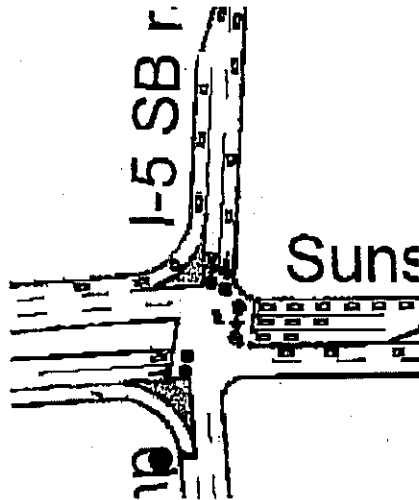
- 1) Document states that a Peak Hour Factor (PHF) of 0.90 would be used, but the analysis used 0.92. Caltrans agrees with the use of a PHF of 0.92. The TIAR needs to be modified to reflect what was used in the Highway Capacity Software.
- 2) Document states that the percent of RVs for mainline is 5%, but the analysis used 2%.
- 3) According to the Caltrans published 2004 data, the percent of heavy vehicles in the project area is 18%. The study used 12%.
- 4) Analysis of the southbound segment from the Bowman interchange to the Sunset Hills interchange assumed 3 lanes. Only half of this segment has a third lane for truck climbing, the rest is 2 lanes. This segment either needs to be analyzed as 2 lanes for the entire stretch, or broken into 3 separate segments and analyzed with the actual number of lanes in each segment.
- 5) If Free-Flow Speed was "Measured," as stated in the analysis, please provide documentation of the field study. If not, the appropriate use of the methodology is to start with a Base Free-Flow Speed and make the necessary speed adjustments.

FREEWAY RAMPS MERGE/DIVERGE ANALYSIS USING HCS

- 1) Document states that a PHF of 0.90 would be used, but the analysis used 0.92.
- 2) Document states that the percent of RVs for the ramps is 5% and Heavy Vehicles is 10%. The analysis used 2% and 12%, respectively.

INTERSECTION ANALYSIS USING SYNCHRO

- 1) The following geometrics were used in the analysis of the Sunset Hills/SB Ramps intersection:



SB – 2 lefts and 1 free right (storage length of 150')

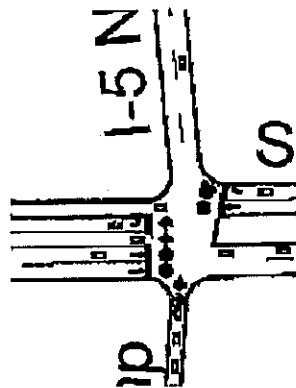
EB – 2 thru and 1 free right

WB – 2 lefts (storage length of 100') and 1 thru lane

This is inconsistent with the document because the document didn't identify the need for an EB free right.

(The distance to "Floyd" Lane is indicated as 1,676 feet from the interchange in the analysis) This private road currently exists closely spaced from the interchange. Please identify whether the distance spacing is correct.

- 2) The following geometrics were used in the analysis of the Sunset Hills/NB Ramps intersection:



NB – Single lane approach

EB – 2 thru and 2 lefts (300')

WB – 1 thru and 1 right

This is inconsistent with the document because the document didn't identify the need for two eastbound (EB) through lanes. Also, the TIAR identified the need for a westbound (WB) free right, which wasn't accounted for in the analysis.

Comments on Proposed Interchange Improvements

1. Based on discussions with the County and the developer, Caltrans expects that the DEIR will carry both the roundabout and signal options forward as equal alternatives.
2. The document and proposed mitigations do not address the need for pedestrian and bicycle facilities on the interchanges.
3. The DEIR does not propose interchange improvements beyond signalized intersections and roundabouts to address project impacts. Changes to the interchange configuration are

improvement alternatives that should be analyzed and included in the DEIR. For example, an EB Sunset Hills Drive to NB I-5 loop on-ramp would mitigate the intersection impacts created from project traffic heading to NB I-5.

4. Currently, both the Sunset Hills and Hooker Creek interchanges do not have full interchange lighting. The Sunset Hills project is in the process of installing a single luminaire to the NB side of the Sunset Hills Interchange. Considering the significant increase in traffic to both interchanges because of the Sun City project, the developer should be conditioned to provide full interchange lighting (merge/diverge and terminal intersections). The maint/electrical costs associated with the terminal intersection lighting (after installation) will be evenly split between the County and Caltrans. The existing Maintenance Agreement Exhibit A between the two agencies will be updated to add the new facilities.
5. Per page 120 of the TIAR (Development Thresholds), the study estimates the project can build out to year 4 before interchange improvements are required. From Table 55, by the end of year 4 there will be 1,650 residential units, 50% of the golf/recreational, and 30% of the commercially zoned property developed. The study does not address how the proposed roundabout intersections are to be constructed while the interchange is operating at the LOS "C" threshold. The study needs to provide details about the staging and traffic handling required to accommodate project of the proposed interchange improvements (at Year 4).
6. Layouts for signalized intersection options were not included in DEIR. Without the layouts, the following items are unclear:
 - proposed location of the intersections
 - spacing between the intersections
 - right of way needs
7. Short Term Plus Project Only
 - Bowman Interchange
 - Document states that the signalization of the NB ramps "may" also drive the need to signalize the SB ramps. However, based on the data presented in Table 43 "Mitigated Intersections LOS" the only analysis that was done was with signals at all three ramp intersections.
 - Sunset Hills Interchange
 - At the NB ramps intersection, the EB approach is shown as a left turn and a shared left-through lane. The shared lane would require the intersection to be operated with split phasing and resulting in a less than desirable operation. Caltrans would not be supportive of that type of lane configuration. If the EB left turn moves are high enough to necessitate two left turn lanes, they should be separate from the through lane.
8. Short Term Plus Approved/Pending Plus Project
 - Document doesn't specifically state if additional lanes are needed on the ramps at the various interchanges studied.
 - Table 48 shows the "Improved I-5 Ramp Level of Service." However, it doesn't give any data for the SB on-ramps for the Jellys Ferry, Hooker Creek, or Sunset Hills Interchanges.

- Based on the data presented in Table 48, there is a need for an additional lane on the I-5 SB off-ramp at Sunset Hills.

9. Long Term Plus Project

- **Sunset Hills Interchange**
 - Again, the document does not provide enough details about the proposed changes to the interchange for Caltrans to make a comment regarding the sufficiency of the proposed improvements.
 - In concept Caltrans agrees with the proposal to realign the NB ramps and construct standard four-way signalized intersections at both the SB and NB ramps.
 - In concept Caltrans is not opposed to the roundabout idea, but until a more detailed analysis is done, including an analysis done with Rodel, sufficiency of the proposed improvements can't be determined.
 - Based on the capacity analysis that was done for the signalized intersections, it appears that the two ramps would operate near or at capacity during at least one peak hour period. Caltrans recommends the lane configuration for the overcrossing include two lanes for eastbound traffic between Floyd Lane and Snively, and two lanes for the westbound traffic for the same stretch of roadway.
 - Information was not provided to show the distance between the intersection of the NB ramps and the SB ramps. Along with the realignment of the NB ramps, the ultimate design of the interchange should include moving the intersections further apart to mitigate for the queuing interaction that will occur between closely spaced intersections.
 - Based on the Synchro files that were provided, the WB approach to the SB ramps has two left turn pockets with 100 feet of storage. For the ultimate design of this interchange, that length of storage would be considered insufficient. Operationally, dual lefts of 100 feet each would be problematic.
- **Hooker Creek Interchange**
 - Layouts showing the proposed lane configurations for the signal option were not included. Without the layouts, it is impossible for the proposed configuration to be determined. Caltrans utilized the Synchro files, which were not included in the DEIR, to determine what was being proposed.
 - The proposed layout is less than desirable in the ultimate conditions. Caltrans would expect the design to be more in line with a more conventional configuration.

Comments on the Proposed Roundabouts

- Caltrans questions the inclusion of a local frontage road – Auction Yard Road – into the mix of roundabout traffic at the Sunset Hills NB ramp intersection. Based on an assessment of the ultimate operational needs of that intersection, it is recommended that Auction Yard Road be realigned to intersect with Snively Road, as shown in the interim signalization option.
- Considering sight distance requirements of a roundabout and due to the tight topographical location of the existing Sunset Hills SB ramp intersection, a more detailed design level analysis will need to be completed to determine the feasibility of constructing the ultimate improvements.
- Installation of “free-rights” at a roundabout represent additional conflict points for non-motorized users. These safety impacts need to be addressed.

- Multilane roundabouts are susceptible to vehicles crossing their intended travel paths creating conflicts at a roundabout entry or exit. Path overlap can lead to higher accident rates and reduce capacity at entrances and exits. Based on a review of the preliminary layouts provided, it appears that there will be a need for additional lanes at various locations to correct for path overlap.
- Queuing data needs to be provided for each approach of the roundabout due to the potential impacts of traffic backing onto I-5 and/or traffic backing into adjacent intersections.
- The analysis included in the Traffix files did not consider the impact of 10% heavy vehicles.
- Level of service is currently undefined for roundabouts. It is recommended that the measures of effectiveness to be identified for roundabouts include: volume to capacity ratios, queuing, and delay.
- A public information campaign to educate the public on the correct way to drive in roundabouts should be required as a condition of approval for the project and should be the responsibility of the developer.
- Caltrans did a cursory review of the volume to capacity ratio for the following scenarios using the intersection turning volumes found in the TIAR:
 - a) 2015 + Project Sunset Hills Interchange (One lane roundabouts)
 - For the SB ramp intersection, an analysis of the merging impacts of the free right onto westbound Sunset Hills needs to be performed. A preliminary review of the data shows the potential for operational issues at that location which may necessitate the need for an additional lane. During the Saturday peak hour, the southbound free right movement is operating well below what would be considered acceptable for a planning-level analysis.
 - During the Saturday peak hour the eastbound approach is projected to operate slightly below what would be considered acceptable for a planning-level analysis.
 - At the NB ramp intersection, the volume to capacity ratio for the eastbound approach during BOTH the PM peak and the Saturday peak are projected to operate at or below what would be considered acceptable for a planning-level analysis. It may be necessary to add an additional lane in the roundabout.
 - b) 2025 + Project + App/Pending Sunset Hills Interchange (Two-lane roundabouts)
 - On page 110 of the TIAR, the recommended improvements to the interchange include "free-right turn lanes at the southbound approach of the I-5 SB ramp intersection and the eastbound approach of the I-5 NB ramp intersection." Clarification and details are needed regarding how a free right could be added to the eastbound approach of the NB ramp intersection.
 - The volume to capacity ratio for the eastbound approach at BOTH intersections exceeds a desired planning-level analysis threshold during BOTH the PM peak hour and the Saturday peak hour. It may be necessary to add an additional lane in the roundabout.

ATTACHMENT 1 COMPARISON OF MAINLINE I-5 TRAFFIC VOLUMES

	VOLUMES LISTED IN THE TIAR AM PEAK						FORECASTED BACKGROUND VOLUMES	
	2004	2015			2025		2015	2025
	EXISTING	SHORT TERM PLUS PROJECT ONLY	SHORT TERM PLUS APPR/PEND PROJECTS	SHORT TERM PLUS APPR/PEND PLUS PROJECT	LONG TERM NO PROJECT	LONG TERM PLUS PROJECT	BACKGROUND VOLUME (Existing plus 19.59% growth rate)	BACKGROUND VOLUME (Existing plus 40.14% growth rate)
	(Table 7)	(Table 29)	(Table 18)	(Table 33)	(Table 37)	(Table 41)		
I-5 NB, south of Jellys Ferry Road	2,220	2,493	2,506	2,657	2,919	3,035	2,655	3,111
I-5 SB, south of Jellys Ferry Road	2,044	2,534	2,762	2,843	3,313	3,395	2,444	2,864
I-5 NB, north of Jellys Ferry Road	2,220	2,470	2,564	2,723	2,976	3,101	2,655	3,111
I-5 SB, north of Jellys Ferry Road	2,044	2,350	2,636	2,724	3,170	3,258	2,444	2,864
I-5 NB, north of Hooker Creek	2,172	2,491	2,610	2,738	2,899	2,905	2,597	3,044
I-5 SB, north of Hooker Creek	1,999	2,242	2,575	2,624	3,067	3,137	2,391	2,801
I-5 NB, north of Sunset Hills Road	2,196	2,840	3,002	3,462	3,655	4,185	2,626	3,077
I-5 SB, north of Sunset Hills Road	2,022	2,560	2,668	3,011	3,214	3,576	2,418	2,834
I-5 NB, north of Bowman Road I/C	2,389	3,256	3,915	4,369	5,103	5,641	2,857	3,348
I-5 SB, north of Bowman Road I/C	2,199	2,601	2,773	3,092	3,367	3,715	2,630	3,082

	VOLUMES LISTED IN THE TIAR PM PEAK						FORECASTED BACKGROUND VOLUMES	
	2004	2015			2025		2015	2025
	EXISTING	SHORT TERM PLUS PROJECT ONLY	SHORT TERM PLUS APPR/PEND PROJECTS	SHORT TERM PLUS APPR/PEND PLUS PROJECT	LONG TERM NO PROJECT	LONG TERM PLUS PROJECT	BACKGROUND VOLUME (Existing plus 19.59% growth rate)	BACKGROUND VOLUME (Existing plus 40.14% growth rate)
	(Table 7)	(Table 29)	(Table 18)	(Table 33)	(Table 37)	(Table 41)		
I-5 NB, south of Jellys Ferry Road	2,623	2,993	3,224	3,412	3,895	4,060	3,137	3,676
I-5 SB, south of Jellys Ferry Road	1,931	1,869	2,053	2,041	2,401	2,368	2,309	2,706
I-5 NB, north of Jellys Ferry Road	2,623	2,898	3,199	3,406	3,864	4,049	3,137	3,676
I-5 SB, north of Jellys Ferry Road	1,931	1,799	2,080	2,090	2,421	2,410	2,309	2,706
I-5 NB, north of Hooker Creek	2,566	2,763	3,141	3,296	3,766	3,919	3,060	3,596
I-5 SB, north of Hooker Creek	1,889	1,753	2,157	2,161	2,533	2,536	2,259	2,647
I-5 NB, north of Sunset Hills Road	2,595	3,541	3,505	4,336	4,365	5,141	3,103	3,637
I-5 SB, north of Sunset Hills Road	1,910	2,512	2,586	3,287	3,333	3,990	2,284	2,677
I-5 NB, north of Bowman Road I/C	2,823	3,561	3,721	4,482	4,697	5,443	3,376	3,956
I-5 SB, north of Bowman Road I/C	2,078	2,813	3,393	4,021	4,609	5,225	2,485	2,912

* Forecasted Background Volumes were based on data provided in the TIAR. Page 44 of the TIAR discusses the growth rate for the Short Term conditions, and page 81 discusses the growth rate for the Long Term conditions.

☐ Location where the 2015 forecasted "background" volume is higher than the volume shown in the TIAR for scenarios that include the "background" volume AND the condition in which either the Project has been built, the Approved/Pending projects have been half built, or both have been built.

☐ Location where the 2025 forecasted "background" volume is higher than the volume shown in the TIAR for scenarios that include the "background" volume AND the condition in which either the Project has been built, the Approved/Pending projects have been built, or both have been built.

ATTACHMENT 2 **REVISED TABLE 52**

ADT	
Project External Trips (1)	
DW Commercial (2)	13,346
DW Residential	10,470
Total New Trips on I-5	23,816

PM Peak Hour	
Project External Trips (1)	
DW Commercial (2)	1,207
DW Residential	766
Total New Trips on I-5	2,063

ADT	Location	Commercial Trips	Residential Trips	DW Project PM Peak Hour			2026 DW Project PM Peak Hour		
				Commercial Trips	Residential Trips	Total Trips	Commercial Trips	Residential Trips	Total Trips
	Residual	2%	10%						
				267	1,047	1,314	26	77	103
19.4	Oasis	1%	1%	400	1,152	1,552	39	84	123
18.07	Twin View	2%	1%	667	1,250	1,924	65	92	157
17.32	Jct. 299	3%	15%	1,088	2,827	3,895	104	207	311
15.27	Hilltop	7%	15%	2,002	4,307	6,399	104	322	516
14.46	Cypress	7%	20%	2,938	8,401	11,339	285	475	760
12.15	S. Bonneyview	7%	0%	3,870	8,491	12,361	376	475	851
9.77	Knappton	1%	2%	4,004	8,701	12,705	389	400	789
6.74	Riverside	4%	5%	4,538	7,224	11,762	441	529	970
5.20	Bella Ferry Rd	4%	0%	5,072	7,224	12,296	483	520	1,003
4.29	Deschutes	9%	5%	6,273	7,748	14,021	609	587	1,196
0.01	Gage Point	14%	1%	8,141	7,853	15,994	781	575	1,356
41.53	Bowman	14%	0%	10,010	7,853	17,863	972	575	1,547
38.72	Sunset Hills								
36.37	Hooker Creek			9,337	2,618	5,954	324	102	516
32.24	Jellys Ferry	2%	0%	3,070	2,618	5,687	208	102	490
31.04	Wilcox	1%	0%	2,936	2,618	5,554	285	182	477
28.38	North Red Bluff	5%	0%	2,269	2,618	4,886	220	192	412
27.47	Adobe	4%	0%	1,735	2,618	4,353	169	102	271
26.72	Antelope	8%	10%	934	1,571	2,505	91	115	206
24.87	Diamond/S Main	5%	10%	267	524	790	26	38	64
	Residual	2%	5%						

(1) External Trips from Tables 21, 22, and 23.

(2) Commercial Trips includes medical, the recreational/support trips and a midline reduction of 10% for the "commercial" trips.

ATTACHMENT D COMMENT LETTER # 2

*CORRESPONDENCE TO GOVERNOR DAVIS
FROM COALITION OF TRIBES*

February 11, 2003

HAND-DELIVERED

Governor Gray Davis
Office of the Governor
State Capitol Building, First Floor
Sacramento, CA 95814

Dear Governor Davis:

The undersigned tribes have formed a coalition for the purpose of commencing tribal-state compact negotiations in good faith with the State of California as provided for in Section 4.3.3 of the tribal-state compacts. Additionally, the undersigned coalition anticipates negotiations under Section 12.1. Our group is composed of tribes presently operating gaming facilities, tribes with compacts that intend to commence operations in the near future, tribes that have previously requested compacts, and tribes intending to request compacts.

We believe that the principles of unity guiding our coalition in these negotiations dovetail with the principles you have recently articulated: respecting the sovereignties of our tribes and the State of California; strengthening tribal economic self-sufficiency; assuring the integrity of Indian gaming; recognizing that the exercise of rights triggers responsibilities, including the obligation to fairly mitigate off reservation impacts of future development; meeting and conferring with local governments concerning those impacts; and making fair share contributions from increased revenues of additional slot machines.

Our group would like to schedule a meeting with the representatives you have appointed for this purpose to commence discussions. The undersigned Tribes with existing compacts anticipate providing formal notice to you pursuant to Section 4.3.3 on March 8, 2003.

Sincerely,

By

Printed Name

Title

Tribes

Margaret Dalton
MARGARET DALTON
Chairperson
JACKSON RANCHERIA BAND OF MIWOK

By

Printed Name

Title

Tribes

Paula Lorenzo
PAULA LORENZO
Chairwoman
Ramsey Indian Rancheria

cc: David Rosenberg
Tribal Attorneys

February 11, 2003

Re: Tribal-State Gaming Compact Negotiations

Page 2

By Nicholas H. Fonseca
Printed Name Nicholas H. Fonseca
Title Tribal Chairman
Tribe Shingle Springs Rancheria

By John Currier
Printed Name John Currier
Title Chairman
Tribe Rincon San Luiseno Band

By Elmer Thomas
Printed Name Elmer Thomas
Title Vice Chairman
Tribe Snake River Rancheria Tribal Yaku

By Nora McDowell
Printed Name Nora McDowell
Title Chairperson
Tribe Fort Mojave Indian Tribe

By Wendy Del Rosa
Printed Name wendy Del Rosa
Title Chairperson
Tribe Alturas Rancheria

By Leonard Bowman
Printed Name Leonard Bowman
Title Tribal Representative
Tribe Bear River Band of Laharville Rancheria

By Steve C. Santos
Printed Name Steve C. Santos
Title Tribal Chairman
Tribe Meekopa Indian Tribe of Chico Rancheria

By Valerie Edwards
Printed Name Valerie Edwards
Title Tribal Chair
Tribe Susanville Indian Rancheria

February 11, 2003

Re: Tribal-State Gaming Compact Negotiations

Page 3

By Dixie Jackson
Printed Name DIXIE JACKSON
Title Tribal Chair
Tribe Picayune Rancheria

By Donnamarie Potts
Printed Name Donnamarie W. Potts
Title Chairperson
Tribe Buena Vista Rancheria

By J-M
Printed Name JAMES HILL
Title TRIBAL SPOKESMAN
Tribe LA POSTA BAND OF MEXICAN INDIANS

By Alvis Johnson
Printed Name Alvis Johnson
Title Chairman
Tribe Karuk Tribe of California

By Harlan Pinto Jr
Printed Name Harlan PINTO SR.
Title Chairman
Tribe Ewilaapaay

By Carol Ervin
Printed Name CAROL ERVIN
Title CHAIRWOMAN
Tribe TRINIDAD RANCHERIA

By Jessica Thomas
Printed Name JESSICA THOMAS
Title Chairperson
Tribe Dubann Rancheria

By Elaine Patterson
Printed Name Elaine Patterson
Title Chairperson
Tribe Cortina Indian Rancheria

Correspondence to Governor Gray Davis from Coalition of Tribes

February 11, 2003

Re: Tribal-State Gaming Compact Negotiations

Page 4

By Robert Smith
Printed Name Robert Smith
Title Chairman
Tribe Pala Band of Mission Indians

By : Anthony Jack & Assoc
Printed Name Anthony Cohen for Anthony Jack
Title Tribal Chairman
Tribe Big Valley Band of Pomo Indians

By Tim L. Fourkiller
Printed Name Tim L. Fourkiller
Title Clem Indian Colony of Pomo Indians
Tribe Pomo

By _____
Printed Name _____
Title _____
Tribe _____

By _____
Printed Name _____
Title _____
Tribe _____

By _____
Printed Name _____
Title _____
Tribe _____

By _____
Printed Name _____
Title _____
Tribe _____

COMMENT LETTER #2 RESPONSE

Comment Letter #2 – El Dorado County and El Dorado County Air Quality Management District

2-1. This comment is a summary of El Dorado County's objections to the Draft Supplemental EIR. Caltrans has determined that the Supplemental EIR's analyses of air quality and additional alternatives are legally adequate and compliant with CEQA, and fully responsive to the Court of Appeal Decision. Further analysis of traffic impacts as the commenter suggests is beyond the scope of the Court of Appeal decision, and there is no basis for extending the 45-day comment period, contrary to the commenter's assertion. Each of these comments is responded to in substantially more detail below.

2-2. This comment raises and summarizes a number of issues that are also raised through subsequent specific comments in this comment letter. The following responses cover the issues raised in this comment. In addition, the reader may refer to the remainder of the responses to this commenter's letter.

Air Quality

The commenter is correct that the Supplemental EIR discloses the Interchange Project's emissions of ozone precursors, that it discloses the portion of the regional motor vehicle emissions budgets that those emissions constitute, and further, that it concludes that those emissions are not significant in relation to those budgets. All of this directly responds to the Court of Appeal's decision.

The commenter is not correct, however, in stating that the Supplemental EIR provides no analysis of the Project's emissions of ozone precursors or of the portion of the regional motor vehicle emissions budgets that those emissions constitute. Simply put, there is little "analysis" required to calculate a project's emissions; this is primarily a calculation, and the Supplemental EIR describes the calculation. Supplemental EIR at pp. 5.5-4–5.5-5. The Supplemental EIR also describes, at some length, both the methodologies by which Caltrans estimated the Interchange Project's emissions of ozone precursors and by which it selected the 1 percent metric used to determine significance. *Id.* at 5.5-6–5.5-11. More detailed comments and responses on this topic are set forth below. Please see in particular, Responses 2-3 through 2-6 and 2-10 through 2-19.

Traffic

This comment also suggests that Caltrans relied on traffic "projections that it knew were wrong." Caltrans disagrees that the traffic projections are either wrong or that it knew so and nonetheless proceeded. The trial court and the Court of Appeal both upheld the traffic projections and analyses in the 2002 Final EIR. Ruling at 21-22; Decision at 41-43. Therefore, Caltrans need not revisit or revise those projections and analyses, and it is appropriate for Caltrans to rely on them in the Supplemental EIR. Please also see Response 1-5, above, regarding the use of traffic information from the 2002 Final EIR.

Alternatives

This comment also suggests that Caltrans' analysis of smaller hotel and casino alternatives is inadequate because it does not state the actual impacts of the alternatives. This suggestion is incorrect.

The Court of Appeal directed Caltrans to "consider and analyze the alternative, or alternatives, of a smaller hotel and casino complex." Decision at 57-58. Although this mandate allowed Caltrans to elect to analyze only one additional alternative, to be conservative, Caltrans analyzed two additional alternatives. Alternative D consists of a casino approximately 50 percent smaller than the approved casino and a hotel with 200 rooms, as compared to 250 rooms in the approved hotel. Alternative E consists of a casino approximately 50 percent smaller than the approved casino and no hotel. In both alternatives, other, ancillary facilities such as parking would also be reduced proportionately. Alternatives D and E are described in more detail in Chapter 4 of the Draft Supplemental EIR, including Tables 4.1 and 4.2, which provide specific square footages for each of 12 components of each alternative. Alternatives must be "described in sufficient detail to serve the informational purpose of the report to the governmental body which will act and the public which will respond to the action through the political process." *City of Rancho Palos Verdes v. City of Rolling Hills Estates* (1976) 59 Cal.App.3d 869, 892. The Supplemental EIR provides the required detail.

Alternatives D and E constitute a reasonable range of alternatives as CEQA requires and respond to the Court of Appeal's direction. Specifically, the substantial reduction in the size of the casino, and both the modest reduction in the size of the hotel and the total elimination of the hotel, are capable of avoiding or substantially lessening some of the potentially significant impacts of the Interchange Project (although all impacts of the proposed project are already reduced to a less-than-significant level with mitigation). *See, e.g.*, Sections 4.2.2, 4.2.3 (describing substantial reductions in water and wastewater demands), 5.8 (discussion of reduced visual resource impacts), App. B (providing trip generation estimates for the alternatives).

Contrary to the commenter's assertion, the Supplemental EIR also discloses the specific impacts of Alternatives D and E on traffic and provides specific, quantitative information on water and wastewater demands and other features of the alternatives. Supplemental EIR at Sections 4.2.2, 4.2.3, 5.4, App. B. Further, the comparative analyses of Alternatives D and E thoroughly cover every impact category covered in the 2002 Final EIR. Supplemental EIR at Ch. 5; see also Tab. 4.3 (summarizing the comparison of the alternatives and the proposed project, as CEQA Guideline 15126.6(d) recommends).

CEQA specifically directs this type of comparative analysis for alternatives. CEQA Guideline 15126.6(d), entitled "Evaluation of Alternatives," provides as follows:

The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and *comparison with the proposed project*. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to *summarize the comparison*.

This citation demonstrates that the emphasis in an alternatives analysis is comparing the alternatives to the proposed project. Indeed, the purpose of an alternatives analysis is to identify alternatives that would “lessen one or more of the significant effects” of the proposed project. CEQA Guideline 15126.6(c). In other words, the analysis of alternatives is not to determine the impacts of the alternatives themselves, but rather to examine their effects as compared to the effects of the proposed project.

Similarly, CEQA’s most fundamental commands are that the lead agency disclose potentially significant impacts and seek measures to mitigate those impacts. Pub. Res. Code §§ 21002, 21002.1. The Supplemental EIR satisfies both of these commands by disclosing which impacts of the proposed project would remain significant under Alternatives D and E, or which would be reduced or avoided, and by setting forth the mitigation measures that would be required to reduce those remaining potentially significant impacts to a less-than-significant level or to avoid those altogether.

2-3. This comment suggests that the Supplemental EIR does not contain sufficient information for El Dorado County to comment on the project specific emissions calculations. Caltrans disagrees with this comment, and notes in response that the Supplemental EIR does contain sufficient information, and further notes that the commenter did submit 37 pages detailed comments, plus attachments. The Supplemental EIR explains in detail the models that were used to estimate the Interchange Project’s emissions of ozone precursors, why those models were selected, and how those models compare to the models used in the 2002 Final EIR and by the Sacramento Area Council of Governments in its transportation planning work. Supplemental EIR at pp.5.5-5–5.5-6.

The commenter cites to CEQA Guideline 15147, which provides that an EIR “shall include summarized technical data . . . to permit full assessment of significant environmental impacts by reviewing agencies and members of the public.” Section 5.5-7 of the Supplemental EIR provides a detailed technical explanation of the Interchange Project’s specific traffic-related emissions, including an explanation of the models that were used and a number of tables showing the results of the numerical calculations that were completed. This is the type of technical and specialized analysis and data that is often placed in an appendix to an EIR pursuant to Guideline 15147, but Caltrans elected to include this detail in the Supplemental EIR because it responds directly to the Court of Appeal’s specific direction. In Caltrans’ view, this information constitutes the required supporting analysis for the conclusions in the Supplemental EIR, and this level of detail is at least equivalent to, if not greater than, the level of detail typically included in an EIR.

The commenter also requests, in its comment letter, very detailed information regarding the air quality modeling, including electronic disks containing the modeling runs, and all inputs, assumptions and settings used in the models. This information has been provided directly to the commenter as requested, and will be provided to others upon request. Typically, detailed and technical information such as actual modeling runs is not included in an EIR because the information does not provide any meaningful disclosure to the public, whereas the conclusions and the supporting analysis and discussion in the EIR do provide that meaningful disclosure.

2-4. The commenter asserts that the measure used to determine the potential significance of the Interchange Project's ozone precursor emissions is invalid and that Caltrans should have used the commenter's adopted stationary-source threshold instead. Caltrans disagrees on both points, for a number of reasons. Each is taken in turn below.

Caltrans' Air Quality Significance Measure Is Appropriate and Supported by Substantial Evidence

The Court of Appeal directed Caltrans as follows:

[D]isclose and analyze what the interchange/hotel/casino's specific traffic-based ROG and NO_x emissions (or estimates) are, what their contributions to the regional emissions budgets are, and whether these emissions and contributions are significant (for example, in comparison to other existing or planned projects within the transportation conformity analysis).

Decision at 57-58.

Thus, the Court of Appeal required Caltrans to use two measures of significance: (i) a comparison of the estimate of the Interchange Project's emissions to the regional motor vehicle emissions budgets, and (ii) a comparison of the Interchange Project's emissions to another project. The Supplemental EIR contains both of the required comparisons. Supplemental EIR at Section 5.5-7.

As the Supplemental EIR explains in Section 5.5-7.4, to develop a measurement by which to determine whether the Interchange Project's contribution to the applicable motor vehicle emissions budgets would be significant, Caltrans initially looked to the United States Environmental Protection Agency's (EPA) "NO_x SIP Call" and Clean Air Interstate Rule (CAIR) protocols because these protocols had included the development of criteria for determining a significant contribution to an ozone nonattainment area. Caltrans examined, in detail, the approach that the EPA used in the NO_x SIP Call and the CAIR rulemakings, and used the evidence and information that the EPA used to support that approach as guidance in developing an appropriate measure of significance for the Interchange Project's ozone precursor emissions to be used in the Supplemental EIR. Caltrans, however, did not adopt any of the NO_x SIP Call or the CAIR methodologies directly. Caltrans has not relied at all on the second phase of these protocols, which involved the setting of interstate transport caps.

Caltrans' development of the significance measure used in the Supplemental EIR started from the EPA's determination in the NO_x SIP Call and CAIR protocols that a contribution of 2 parts per billion (ppb) of the ozone precursor NO_x toward an exceedance of a standard in a nonattainment region is a potentially significant contribution. Because the Court of Appeal directed Caltrans to measure significance as a percentage contribution to the applicable motor vehicle emissions budget, Caltrans next translated the 2 ppb into a percentage measure. That translated to between approximately 1 and 2 percent, depending on the standard that is used, because the standard provides the denominator in the equation (either the 1-hour standard at 120 ppb or the 8-hour standard at 80 ppb). The 2 ppb is the numerator. Thus, using the 1-hour standard results in a significance level of 2/120, or 1.67 percent, and using the 8-hour standard

results in a significance level of 2/80, or 2.5 percent. To ensure a conservative analysis that best protects the environment, Caltrans then selected a number below the low end of that range – 1 percent – as its measure of significance to evaluate the Interchange Project’s contribution of ozone precursors to the Sacramento nonattainment region motor vehicle emissions budgets for ozone precursors.

Then, by comparing the Interchange Project’s emissions to the local motor vehicle emissions budgets and using the 1 percent measure, Caltrans tied the significance standard that it had developed – starting from the EPA’s methodologies and science and then applying its own criteria – to the local nonattainment, transport, weather and other conditions that are reflected in the Sacramento nonattainment area motor vehicle emissions (attainment) budgets for ROG and NOx. In other words, this process made the 1 percent significance measure, which was originally based on evidence developed through two EPA rulemaking proceedings, directly applicable to the Sacramento nonattainment region, while also responding directly to the Court of Appeal decision.

The commenter asserts that the NOX SIP Call and CAIR protocols do not constitute an applicable significance measure. As explained above, however, the Supplemental EIR does not use these protocols as a measure of significance. Rather, Caltrans used the science and evidence developed in those rulemakings as part of the basis for its determination that a 1 percent contribution of precursors to a nonattainment region may be significant, and that a contribution of less than that is not significant. Also, the crux of the determination of potential significance of the Interchange Project’s impact on air quality is the comparison between the project-specific emissions and the regional motor vehicle emissions budgets. This makes the analysis directly applicable to, and fully reflective of, local conditions.

After determining that a contribution of up to 2.5 percent could be considered less-than-significant (under the 8-hour standard), Caltrans took a conservative approach and selected a much lower level – 1 percent – as its measure of significance for use in the Supplemental EIR. Supplemental EIR at 5.5-7.4. This process is consistent with the Court of Appeal’s instruction to provide a comparison to the motor vehicle emissions budget as the measure of significance. Also, such a comparison is appropriate here because the budget is illustrative of compliance with an adopted plan, and therefore reflects the emissions that may occur under local conditions while the overall environmental impact of nonattainment is resolved.

The commenter also complains that these protocols do not apply because EPA developed them specifically for NOx emissions. This, too, is incorrect. By applying the 1 percent measure to the regional motor vehicle emissions budgets for both ROG and NOx, the Supplemental EIR appropriately measures the significance of the Interchange Project’s ozone precursor emissions for both ROG and NOx.

Similarly, the commenter’s other technical complaints about these protocols are not relevant here because Caltrans simply did not adopt these protocols or use them directly, and thus they are not the subject of the Supplemental EIR. In any case, one reason Caltrans relied on this particular metric here is that the technical soundness of EPA’s approach to determining the significance of contributions to nonattainment was challenged and upheld in federal court, thus providing

Caltrans with a methodology that has a basis in both air quality science and law. *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir., 2000).

The commenter asserts that “it is remarkable” that Caltrans had to “go so far” to find an applicable measure. The level of research required to develop an appropriate measure of significance is due to the fact that the analysis required by the Court of Appeal in this regard is unprecedented because the significance of ozone precursors, as regional pollutants, is typically measured for transportation-related projects on a regional basis, rather than a project-specific basis, as the Court directed here.

Perhaps most importantly, however, this comment again fails to note that Caltrans compared the Interchange Project emissions to the motor vehicle emissions budgets for the region. By doing so, the all local conditions, including the amount of ozone precursors (both NO_x and ROG) that may be emitted into this particular region while the region nonetheless moves toward attainment of the applicable air quality standards, are incorporated into the determination of significance. This is exactly the comparison the Court of Appeal directed Caltrans conduct in stating that the EIR must disclose and compare the Interchange Project’s “contributions to the regional emissions budgets, and [evaluate] whether these contributions are significant.” Decision at 57-58.

The Courts Have Already Determined That El Dorado County’s Stationary-Source Threshold is Inapplicable and Need Not Be Used, and There is No Basis for Revising That Conclusion.

The thrust of the commenter’s objection appears to be a claim that the Supplemental EIR should have used the commenter’s local, stationary source threshold of 82 pounds per day. The commenter also made this claim in response to the 2002 Draft EIR and Caltrans responded to it in the 2002 Final EIR. 2002 Final EIR at Response 43-SR-3. The commenter also made this claim in litigation, and both the trial court and the Court of Appeal rejected this contention, primarily because the suggested measure is a de minimis, stationary source threshold and this is a transportation project with mobile source emissions. Ruling at 15-18; Decision at 19. This objection, therefore, is beyond the scope of the Supplemental EIR and beyond the scope of issues to be addressed in response to the Court of Appeal decision.

Also, the threshold the commenter claims that Caltrans should have used is a stationary source threshold. The commenter’s threshold, therefore, is inapplicable to the Interchange Project, which is a transportation-related project, and particularly to ozone precursor emissions, which are regional in nature and are emitted at infinite locations by traffic traveling to and from various land uses. Contrary to the commenter’s assertion, no provision of the CEQA statute or Guidelines states that a lead agency must defer to a different agency’s thresholds for a different type of project.

The AQMD threshold is also inapplicable here because it is based on a de minimis screening criteria, which ignores regional conditions and all emissions below the screening level. Specifically, that standard is based on the annual limit applied to determine whether a new stationary source in a serious ozone nonattainment area is subject to certain regulatory requirements. Health & Saf. Code §§ 40919-40920.5. In other words, the commenter’s proposed standard neither quantifies a project’s emissions or measures its significance on the region or on the attainment of applicable air quality standards. Rather, it is nothing more than a

static, regulatory trigger for stationary sources. On the other hand, a comparison to the motor vehicle emissions budgets considers all emissions in the region from all sources.

Further, the document setting for these standards, the El Dorado County Air Quality Management District Guide (County Air Guide) itself states that it is only meant to apply where El Dorado County is the lead agency. Further, El Dorado County possesses no jurisdiction over either Caltrans, a state agency, or the Rancheria, a sovereign land. *See* Gov. Code § 12012.25(g) (the “on-reservation impacts of compliance with the terms of a tribal-state gaming compact” are not subject to CEQA). There is no basis or authority for the commenter’s statement that Caltrans is “bound” by these local stationary source thresholds to evaluate a state-approved project with mobile source emissions.

2-5. This comment also asserts that Caltrans should have used El Dorado County’s local air quality thresholds. It states that the County “thresholds must be used because they are the official thresholds applicable to all projects in El Dorado County, and the [County Air Quality Management District] AQMD in its previous comments on this project and in these comments is requesting that they be used.” As explained in Response 2-4, above, the courts have already rejected this contention and it is beyond the scope of the Supplemental EIR. Ruling at 15-18; Decision at 19. As also explained above, these are stationary source thresholds that do not apply to an interchange project.

Further, neither Caltrans, the Bureau of Indian Affairs nor the Federal Highways Administration are required to abide by local standards or regulations. The Tribe and the Rancheria, as sovereigns subject only to federal regulation, are likewise not bound by County standards or regulations.

The comment asserts that the AQMD thresholds assume a special status pursuant to CEQA Guideline 15064.7, which encourages lead agencies to adopt significance thresholds for their own use when acting as lead agencies. This Guideline does not require Caltrans to adopt or use the AQMD thresholds, particularly in a situation such as this where the threshold is developed for stationary sources and its use is being advocated for an evaluation of mobile source emissions from an interchange project.

A footnote to this comment states that the AQMD thresholds are mandatory because the AQMD has requested their use. Contrary to this suggestion, however, the CEQA Guidelines do not require a lead agency to use a threshold set or suggested by another agency.

In summary, under CEQA Guideline 15064.7 and the prior court rulings in this matter, the commenter’s statement that the local AQMD thresholds have special status and must be applied here is incorrect. There is likewise no authority for the commenter’s footnote that this special status attaches only because the AQMD requested that the thresholds be used. Please also see Response 2-4, above.

2-6. The comment claims that Caltrans must use the local air quality significance threshold because that is the only way Caltrans can “discharge its obligation to give proper consideration to California’s [S]tate ambient air quality standard.” The issues regarding the consideration of the State ambient air quality standard are beyond the scope of the Supplemental EIR. The Court of Appeal ruled that El Dorado County and Voices for Rural Living failed to exhaust their

administrative remedies on that point, and thus that judicial review of this issue is barred in this proceeding. Decision at 22-28. The scope of the Supplemental EIR, as a CEQA document prepared in response to the Court of Appeal decision and ensuing writ, and to be submitted to the court in response to that writ, is limited to the additional analysis the Court of Appeal required. The State ambient air quality standards are not one of the issues requiring further analysis as identified by the Court. Decision at 25 (“[w]e conclude that the doctrine of administrative remedies precludes us from considering . . . the state ozone standard”); 57-58 (setting forth required additional analysis and not including the state ozone standard).

Nonetheless, the evidence demonstrates that the Interchange Project’s emissions are not significant under the State standard, as well as the federal standard. The new California 8-hour ozone standard is approximately 88 percent of the comparable federal standard (70 ppb (state standard) / 80 ppb (federal standard) = 0.88). Applying that ratio to the 1 percent significance measure under the federal standard yields the conclusion that a 0.88 percent contribution to the motor vehicle emissions budget would be a significant contribution under the State standard. Likewise, the California 1-hour standard is approximately 75 percent of the comparable federal standard (90 ppb (state standard) / 120 ppb (federal standard) = 0.75). This yields the conclusion that a 0.75 percent contribution to the motor vehicle emissions budget would be a significant contribution under the State standard. The highest contribution of the Interchange Project for any pollutant and under any scenario is 0.37 percent (for NO_x under Burden 7F with no credit for pass-by trips). Supplemental EIR at Tab. 5.5-6. This is approximately half of even the most stringent significance estimate under the State ozone standard. Thus, even under the more stringent State standard, the evidence before Caltrans demonstrates that the Interchange Project’s emissions are not significant.³

2-7. The comment claims that the Supplemental EIR must use the County’s local significance thresholds because it relied on the County’s Missouri Flat EIR, which used these thresholds. In Caltrans’ view, this comment is both factually and legally incorrect. First, as a factual matter, Caltrans did not rely on the Missouri Flat EIR for analysis, methodology or significance thresholds. Supplemental EIR at pp. 5.5-10–5.5-11. Rather, it simply copied emissions calculation results from that EIR. Referencing a portion of a document for informational purposes does not create an obligation to apply the same methodology as that cited document. Second, the commenter provides no legal authority for this statement, and there is no requirement under CEQA that one agency must follow another agency’s methodology, or that one EIR must follow another EIR’s methodology.

The comment also claims that the Supplemental EIR misconstrued the Missouri Flat EIR. This is also incorrect. The comment recites the Supplemental EIR’s statement that El Dorado County “concluded that traffic-related emissions of the Missouri Flat Area projects were not significant because they did not cause exceedances of the regional emissions budgets” and claims that this is an incorrect statement. The comment fails to note, however, that at the end of the quoted sentence is a footnote. That footnote confirms that it was in the EIR for the Missouri Flat interchange in which El Dorado County concluded that there would not be significant ozone

³ As has been explained in great detail in the prior CEQA documents for the Interchange Project, there is no existing emissions budget with which to model compliance with the State ozone standard. Also, because the state Clean Air Act does not include an attainment date, and a specified attainment date is necessary to develop an emissions budget, it is not feasible to develop an emissions budget tied to the state ozone standard. Addendum to 2002 Final EIR at Ch. 2. Accordingly, the comparative calculations in the Supplemental EIR cannot be directly replicated for the State standard. In the absence of an established emissions budget, then, the consistency of a project with the State standard must be approximated, as is done here.

impacts because it was a “congestion relief project.” Supplemental EIR at p.5.5-11, n.2. In reaching that conclusion, the County did not take into account the emissions from the cars traveling to and from the Missouri Flat Area projects, which travel the interchange significantly facilitates.

Further, the Missouri Flat project forms a reasonable basis for the comparison directed by the Court of Appeal, because it is a recent transportation-related project in the region where the generators of the indirect emissions of the project were segregated (even though the County denies the connection between the Missouri Flat interchange and the associated big box centers). With most transportation-related projects, the emissions associated with the project alone are not specifically identified because transportation conformity is the basis for determining significance, and transportation conformity is viewed in terms of the emissions of all projects in the region, not individual projects.

2-8. This comment compares the Missouri Flat Area projects’ ozone precursor emissions against the Interchange Project ozone precursor emissions and claims that the Interchange Project’s emissions are greater. This claim is incorrect. The comment separates the Missouri Flat Area projects into three distinct components and compares each component to the Interchange Project. The ROG and NO_x emissions for each separate component are generally less than the emissions from the Interchange Project (including the hotel/casino), but separating these projects for comparison disregards actual conditions (it would be like separating the hotel from the casino). Indeed, El Dorado County considered the components sufficiently linked to analyze them in a single EIR. When properly combined, emissions of both ROG and NO_x from the Missouri Flat Area projects substantially exceed those from the Interchange Project (including the hotel/casino).

This comment also again claims that the Supplemental EIR must use the County’s local significance thresholds. Please see Responses 2-4 – 2-6, above, regarding this claim.

Finally, this comment claims that “since Caltrans has cited the [Missouri Flat] Area EIR for comparative purposes,” the Supplemental EIR must also rely on the County’s local thresholds. As explained in Response 2-7, above, the Supplemental EIR relies on the Missouri Flat Area EIR for information about those projects’ estimated ozone precursor emissions for the purpose of comparing those emissions to the Interchange Project emissions, as the Court of Appeal directed. It does not rely on the Missouri Flat EIR for significance thresholds, and, contrary to the commenter’s assertion, there is no requirement that it do so. Please also see Response 2-7, above.

2-9. This comment further advocates for the use of the AQMD threshold based on the Missouri Flat EIR. Please also see Responses 2-7 and 2-8, above, regarding the County’s Missouri Flat EIRs.

2-10. This is a summary of El Dorado County’s objections to the Supplemental EIR’s use of the 1 percent significance measure. Please see Responses 2-4, above, and 2-11 through 2-16, below.

2-11. This comment continues the objections to the Supplemental EIR’s use of the 1 percent significance measure, and particularly claims that that measure cannot be transferred from the NO_x SIP Call or CAIR protocols. The 1 percent significance measure is not transferred from the

NOx SIP Call or CAIR protocols, however. Rather, as explained above, those protocols constitute substantial evidence supporting the 1 percent threshold's applicability. See Responses 2-4 through 2-6, above. Also, the Supplemental EIR compares the Interchange Project's emissions to the motor vehicle emissions budgets for the Sacramento nonattainment region. By comparing the emissions to the local budgets, the Supplemental EIR localizes the 1 percent significance measure and provides the analysis that the Court of Appeal specifically directed.

This comment also contains incorrect statements regarding Caltrans' reliance on the NOx SIP Call and CAIR protocols in developing its 1 percent significance measure. First, the comment is incorrect in stating that these programs directly apply only on the East Coast. Rather, they apply to most areas east of the Mississippi River, and the CAIR extends westward into Texas. In addition, whether EPA applied the NOx SIP Call and the CAIR protocols only in the east is irrelevant because the analytical approach behind those protocols can be applied anywhere. Also, as explained above, Caltrans did not adopt or directly apply the NOx SIP Call or CAIR protocols. Rather, Caltrans found that the first part of EPA's analytical approach, wherein EPA determined that a contribution of 2 ppb or more may be significant, is relevant evidence for determining an appropriate and cautious measure to assess the potential significance of a single project's contribution to a nonattainment area. This is analogous to the contribution of emissions to an emissions budget that may be significant. Accordingly, the NOx SIP Call and CAIR protocols are substantial evidence supporting Caltrans' determination that a contribution of more than 1 percent to an emissions budget would constitute a potentially significant impact.

The second part of the EPA's approach, which is the portion on which the commenter focuses, was the development of emissions caps for interstate transport. The Supplemental EIR does not rely on that aspect of the EPA's approach, however.

The commenter also asserts that the NOx SIP Call and CAIR protocols examine only the significance of contributions of NOx to air quality regions. Transportation conformity, and the motor vehicle emissions budgets to which Caltrans ultimately applied the 1 percent significance measure it developed after reviewing those protocols, address both NOx and ROG. By comparing the Interchange Project's NOx and ROG emissions estimates to the applicable motor vehicle emissions budgets for NOx and ROG, therefore, the Supplemental EIR appropriately applies the significance measure in the Supplement to both pollutants. The Sacramento nonattainment area motor vehicle emissions budget for ROG incorporates that pollutant's different, *i.e.*, more local, properties, as well as the properties, meteorology and other factors specific to the region. Therefore, when the Supplemental EIR's methodology is looked at in total, the fact that the original NOx SIP Call and CAIR protocols focused on NOx is not a limiting factor.

2-12. The comment again focuses on the NOx SIP Call and CAIR protocols as if the Supplemental EIR adopted them wholesale. The Supplemental EIR simply borrows the 2 ppb threshold from the NOx SIP Call and CAIR protocols, and then translates that into its 1 percent measure of significance, which it then ties to local motor vehicle emissions budgets. By applying this 1 percent measure to the local budgets, the Supplemental EIR directly analyzes the potential impacts of the Interchange Project on the Sacramento nonattainment region. By this methodology, the Supplemental EIR directly responds to the Court of Appeal's specific direction. Decision at 57-58. Please see Responses 2-4 and 2-11 for additional discussion on this point.

In developing the NO_x SIP Call and CAIR protocols, EPA was required to address interstate impacts because it is the agency with the authority to do so, and under the Clean Air Act it is required to do so. Because it was faced with a variety of states and a variety of conditions in developing these protocols, its approach to determining the significance of emissions into a nonattainment area provides a reasoned and broadly applicable approach to that question.

2-13. Please see Response 2-12, above. Contrary to the commenter's suggestion, Caltrans is not using the NO_x SIP Call and CAIR protocols directly or in the absence of local information. Thus, whether the EPA intended these protocols for the evaluation of individual sources is not relevant. Caltrans agrees that the most appropriate way to evaluate the impacts of ozone precursor emissions is on a regional basis, and that is what it did in the 2002 Final EIR through its transportation conformity analysis. *See* 2002 Final EIR at Section 5.5.

The Court of Appeal generally agreed with the use of a conformity approach (Decision at 16), but it also directed Caltrans to estimate and disclose the project-specific emissions and determine their significance by comparing them to the applicable motor vehicle emissions budgets. Decision at 57-58. The Supplemental EIR responds to that command, and in doing so, further informs the public regarding the magnitude and potential significance of the project-specific ozone precursor emissions. The 1 percent measure derived via the 2 ppb threshold in the NO_x SIP Call and CAIR protocols is an appropriate and conservative basis for this analysis.

Also contrary to the commenter's suggestion, Caltrans did not ignore "all-important qualifiers" noted by the EPA regarding individual sources in developing the NO_x SIP Call and CAIR protocols. To the contrary, section 126 of the Clean Air Act allows for the application of the methodologies in those protocols to a particular project, and this has occurred in numerous instances. 42 U.S.C. § 7426(a) (making individual sources subject to State Implementation Plan regulations set forth in section 110 of the Act).

Also, neither the Clean Air Act, federal regulations nor the NO_x SIP Call or CAIR rulemakings provide any support for the commenter's claim that it violates the Act to apply these protocols to individual sources. As explained above, these protocols have been applied to individual projects pursuant to section 126 of the Clean Air Act. Regardless, as also explained above, the Supplemental EIR does not directly apply these protocols. Rather, it relies on a component of the underlying rulemakings for substantial evidence supporting its determination that a contribution of ozone precursor emissions of less than 1 percent of the applicable motor vehicle emissions budgets is not a significant contribution.

2-14. The commenter asserts that the Supplemental EIR compares the Interchange Project's emissions to the total emissions of the Sacramento nonattainment area, and implies that this is an inappropriate comparison. In fact, the Interchange Project's emissions are compared only to the ROG and NO_x motor vehicle emissions budget portions of the overall SIP budget for the Sacramento nonattainment region. This "localizes" the analysis by using the local motor vehicle emissions budgets as the basis for comparison and determination of significance. Also, the motor vehicle emissions budgets recognize the multitude of other sources to which the commenter refers, because those other sources also comprise portions of the overall SIP budget. All emissions must be within the total level that will result in attainment (the SIP budget). Accordingly, the budgets for all types of sources contributing emissions are considered, placed in

balance with each other, and limited as necessary in the development of the SIP. The motor vehicle emissions budgets, therefore, inherently recognize all emissions sources in the region. Accordingly, the comparison of the Interchange Project's emissions to those local motor vehicle emissions budgets both recognizes all other sources in the region and avoids any inappropriate comparison to other emissions sources.

It is also important to note, again, that the Court of Appeal specifically required a comparison to the motor vehicle emissions budgets, and the Supplemental EIR directly responds to that command.

2-15. The commenter again contends that the Supplemental EIR should have used El Dorado County's local, stationary-source emissions threshold. This comment is beyond the scope of the Supplemental EIR. Also, as previously explained, the local threshold does not apply, and there is no requirement that Caltrans adopt it or use it. *See* Responses 2-4 through 2-6, above.

The commenter states that “[w]hat is needed is a criterion tied to state and local air pollution control programs.” By using the local motor vehicle emissions budgets as its basis for comparison, the Supplemental EIR provides exactly that criterion because those budgets incorporate state and local pollution control programs as control measures.

The comment also states that “non-regional, project-specific measures abound, and are regularly used to evaluate the significance of project-specific ozone precursors.” However, these measures generally apply to stationary sources. As the trial court and Court of Appeal have held in this case, stationary source measures do not apply to the Interchange Project. Ruling at 15-18; Decision at 19.

2-16. This comment appears to state, contrary to this commenter's prior assertions, that El Dorado County's local, stationary source threshold does not apply here. The commenter states that the Interchange Project emissions are an indirect source, and that “El Dorado County does not have an indirect source regulation at this time.”

The commenter also states that the 1 percent measure “used in the [Supplemental EIR] is based on the false premise that ozone precursors can only be evaluated on a regional basis.” This statement also contradicts the commenter's prior statements, in Comment 2-15, that the commenter “agrees that ozone is primarily an area or regional pollutant.” This comment also ignores the regional nature of ozone precursor pollution.

San Joaquin Valley Unified Air Pollution Control District Rule 9510 Does Not Apply Here

The commenter asserts that Caltrans should have adopted and followed the San Joaquin Valley Unified Air Pollution Control District's Indirect Source Rule (ISR) 9510. Rule 9510 does not include a measure of significance, however. Rather, it requires that residential and other developers of projects subject to that District's jurisdiction pay a fee and take other measures to mitigate the emissions from their projects.

The commenter's consultant in this project, Sierra Research, commented on Rule 9510 during the rulemaking proceeding. This letter, dated September 15, 2005, is included as Appendix E to this Final Supplemental EIR. In those comments, Sierra Research assailed Rule 9510 as being

unfair and unworkable, and of imposing unduly inflated mitigation requirements on builders. App. E at p.1. Sierra Research also stated that State Implementation Plan (“SIP”) methodology, which utilizes the same motor vehicle emissions budgets on which the Supplemental EIR significance measure is based, is superior to an individual source approach for analyzing the impacts of ozone precursor emissions. *Id.* at 2.

Region-wide pollutant emissions calculated under State Implementation Plans (SIPs) use a more rigorous set of models to determine motor vehicle travel impacts and resulting emission impacts than represented in URBEMIS. During the ISR rule development, the District has provided no clear evidence that URBEMIS is capable of calculating emissions from development projects in a manner that is consistent with SIP-level emissions and has simply asserted its appropriateness for use under these rules.

Id. Sierra Research concluded that Rule 9510 has “serious and fundamental flaws.” *Id.* at 4.

In addition to its fundamental scientific inadequacies (according to Sierra Research), Rule 9510 requires mitigation by the payment of a fee and by other activities such as building more densely and prohibiting woodstoves. Rule 9510 does not address determining the significance of a project’s emissions. Rather, it simply assumes that projects meeting certain dwelling unit or square footage thresholds will require mitigation. Thus, it does not apply here to provide a measure of the significance of the Interchange Project’s project-specific contribution of ozone precursor emissions within the motor vehicle emissions budgets, which is what the Court of Appeal directed Caltrans to evaluate.

The CARB Intrastate Transport Mitigation Program Does Not Apply Here

The commenter also suggests that the Supplemental EIR should have used the Intra-state ozone transport program of the California Air Resources Board (CARB) as a significance measure for the Interchange Project’s contribution of ozone precursor emissions to the motor vehicle emissions budget. Like San Joaquin Valley’s Rule 9510, however, the CARB protocol only addresses mitigation; it does not provide any method for determining or assessing the significance of a project-specific contribution of pollutants to a nonattainment area.

Also, the CARB rule, like El Dorado County’s local threshold, is directed at stationary sources. The Interchange Project is a transportation-related project associated with mobile source emissions. Thus, for this reason as well, the CARB rule does not apply here.

The CARB rule also does not apply here because it bears no relationship to the motor vehicle emissions budgets. 17 Cal. Code Regs. § 70500. The Court of Appeal specifically directed Caltrans to compare the Interchange Project’s emissions to those budgets.

The commenter cites sections 70500 through 70601 of Title 17 of the California Code of Regulations. That range includes a total of three sections. They are entitled Transport Identification (section 70500) and Transport Mitigation (sections 70600 and 70601). These titles further demonstrate that this protocol does not apply to determining the significance of ozone

precursor emissions from a project. The commenter's recitation of CARB's statements regarding federal ozone planning efforts confirms this by its exclusive focus on mitigation.

The commenter asserts that the Interchange Project is subject to a number of mitigation measures set forth in the CARB rules discussed above. However, these mitigation requirements apply to the local air districts in the affected areas, not to particular projects. 17 Cal. Code Regs. § 76000(b)(1); *see also* § 76000(c)(1) (directing implementation of these requirements to "districts"). Also, most of the mitigation requirements apply to stationary sources, not to transportation-related projects.

2-17. The commenter asserts that the Supplemental EIR does not contain a project-specific analysis. In fact, the Supplemental EIR estimates and discloses the Interchange Project's project-specific ozone precursor emissions and analyzes the potential significance of these emissions. Supplemental EIR at pp.5.5-4–5.5-11.

2-18. The commenter suggests that the Supplemental EIR uses an inappropriate "ratio" or "de minimis" type of analysis. As explained below, this is not correct.

The Supplemental EIR Does Not Include a "Ratio" Analysis

The Court of Appeal specifically directed Caltrans to estimate the potential significance of the Interchange Project's project-specific emissions by comparing those emissions to the regional emissions budget and by comparing them to another project. Decision at 57-58. This is precisely what the Supplemental EIR does. Supplemental EIR at pp.5.5-9–5.5-10.

Nonetheless, the commenter, citing to *Kings County Farm Bureau v. City of Hanford* (1990) 221 CalApp.3d 692, claims that the Supplemental EIR uses an improper "ratio" analysis, which masks a project's impacts by comparing it to the magnitude of the existing air quality problem. This comment is incorrect.

Kings County effectively prohibits using the magnitude of an existing problem to minimize the impacts of a particular project. *Id.* at 718. "The relevant question to be addressed in the EIR is not the relative amount of precursors emitted when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin." The use of a "ratio" analysis is prohibited, because the "greater the over-all problem, the less significance a project has." *Id.* at 721.

By comparing the Interchange Project's emissions to emissions budgets, however, Caltrans is complying with *Kings County*. Emissions budgets are pollutant levels that allow *attainment* of the applicable air quality standards. In other words, they do not only reflect the magnitude of the problem, they also reflect the solution, and compliance with an emissions budget is substantial evidence of a project's consistency with achieving that solution.

Accordingly, emissions budgets by their very nature avoid the *Kings County* problem and comply with the *Kings County* court's mandates. Specifically, the worse the existing air quality situation, the smaller the budget must be to attain the applicable air quality standard. The smaller the budget, the more likely it is that a given project's emissions will be significant, *i.e.*, exceed a

1 percent contribution to the budget. Thus, the situation here is the converse of the problem the *Kings County* court identified. Put another way, Caltrans is demonstrating that the Interchange Project's ozone precursor emissions are not significant *in light of* the serious nature of the ozone problems in the air basin, not due to the serious nature of those problems, as was the case in *Kings County*. Please also see 2002 Final EIR at Responses 32-5 and 39-6.

Similarly, a comparison that demonstrates that a project's emissions are consistent with a solution or identified standard or plan, such as the comparison in the Supplemental EIR, is a proper basis for determining that impacts are less-than-significant. *See, e.g.*, CEQA Guidelines, App. G. The Supplemental EIR's analysis, like that in the 2002 Final EIR, confirms that the Interchange Project would not cause the applicable air quality standards to be exceeded, that it would not contribute substantially to such a violation, and that it would not conflict with or obstruct the implementation of an applicable air quality plan (the SIP, which is tied to the motor vehicle emissions budgets). These are the criteria for significance for project-specific air quality impacts set forth in CEQA Guidelines Appendix G. Thus, rather than engaging in an impermissible "ratio" analysis, Caltrans is complying with CEQA Guidelines Appendix G and responding to the Court of Appeal's command.

The Supplemental EIR Does Not Use an Improper "De Minimis" Type Analysis

The commenter also suggests that the Supplemental EIR uses a "de minimis" analysis, which is prohibited. This is incorrect.

First, the Supplemental EIR finds that the Interchange Project's project-specific ozone impacts are not significant because the emissions will be consistent with an emissions budget that allows attainment of air quality standards. This is an appropriate basis for finding an impact less-than-significant. The prohibition to which the commenter refers is on simply dismissing an impact as de minimis, without providing any analysis or evidence to support the conclusion. The Supplemental EIR does not simply dismiss the Interchange Project's impacts as de minimis. Rather, it determines, based on substantial evidence, that the project-specific emissions are not significant because they are an amount, relative to the motor vehicle emissions budgets, which is so small as to not contribute significantly to any exceedance of those budgets. The substantial evidence supporting this conclusion is the science and law developed in the NOx SIP Call and CAIR proceedings, and in the process of creating and adopting the motor vehicle emissions budgets for the Sacramento nonattainment region. The 1 percent measure is not an abstract number below which a project's contribution to the cumulative scenario is simply ignored (like the County's stationary source threshold). Rather, it is a conservative estimate of the level at which a project's individual contribution to the motor vehicle emissions budgets may contribute inordinately to the potential exceedance of those budgets, and therefore would be potentially significant.

Also, the analysis in the Supplemental EIR responds to the Court of Appeal's specific direction that Caltrans determine the potential significance of the Interchange Project's ozone precursor emissions by comparing them to the applicable motor vehicle emissions budgets. Decision at 57 ("[t]o be sufficient, the EIR will have to disclose and analyze what the interchange/hotel-casino's specific traffic-based ROG and NOx emissions . . . contributions to the regional emissions budgets are"). Thus, it is appropriate in this context.

Finally, this comment again refers to the California Ambient Air Quality Standards. As explained in Response 2-6, above, the parties failed to exhaust their administrative remedies on that issue, and that issue is beyond the scope of the writ, and therefore, beyond the scope of the Supplemental EIR.

2-19. This comment reiterates the previous comments that the Supplemental EIR should have used the El Dorado County stationary source threshold of 82 pounds per day or other thresholds suggested by the commenter. As explained above, these measures are inapplicable here, or they are not measures at all, but rather mitigation programs directed at the Central Valley or at air districts like the El Dorado Air Pollution Control District. See Responses 2-4 through 2-18, above, for more detailed responses to these comments.

2-20. The commenter suggests that Caltrans should adopt additional mitigation measures for construction asbestos emissions and that Caltrans should impose the same measures on construction of the hotel and casino and related facilities. To the extent those measure are relevant to the activities involved in constructing the interchange, Caltrans will adopt and implement these measures. To the extent they are relevant to the construction of the hotel and casino and related facilities, Caltrans notes that the construction of those facilities is subject to extensive mitigation measures regarding potential construction asbestos. For example, the construction will comply with the intent of El Dorado County Ordinance 8.44.030, "General Requirements for Grading, Excavation and Construction Activities." Thus, the project sponsor will require contractors to water work areas during excavation and other ground disturbing activities at least twice daily, or more frequently if necessary. The contractors must limit vehicle access and speed, and cover areas exposed to vehicle travel with non-asbestos material. Further, the contractor must provide a Health and Safety Plan prepared by a certified industrial hygienist to the National Indian Gaming Commission (NIGC), to meet all applicable federal, state and local environmental and work safety laws. See 2001 NIGC EA at pp.6-3–6-4.

2-21. This comment summarizes the prior comments. Please see Responses 2-2 through 2-20, above. For all the reasons set forth in those Responses, Caltrans need not rescind and revise the Supplemental EIR as the commenter suggests.

2-22. The commenter claims that Caltrans must prepare a new, updated traffic analysis for the Supplemental EIR. The Court of Appeal, however, directed Caltrans only to prepare a project-specific air quality analysis and an analysis of a smaller casino alternative (or alternatives). Decision at 57-58. The Court of Appeal upheld the trial court's rejection of all of the challenges to the 2002 Final EIR's traffic analysis. Decision at 41-43. Accordingly, those issues are beyond the scope of the Supplemental EIR.

2-23. The commenter suggests that the traffic analysis in the Supplemental EIR must be updated to reflect new project opening years and new information about traffic on Highway 50. Neither of these suggestions is correct.

First, as explained in Response 2-22, above, new or additional traffic analysis is beyond the required scope of the Supplemental EIR, and issues regarding the existing traffic analysis in the 2002 EIR are foreclosed from further litigation.

Second, the only analysis or discussion of traffic that is required to be in the Supplemental EIR is that related to the analysis of alternatives. An alternatives analysis should compare the alternatives to the proposed project to determine whether the alternative may reduce or avoid a potentially significant impact of the proposed project. An alternative need not be analyzed as if it were another proposed project. See Response 2-2, above, for a more detailed discussion of this point. Accordingly, where traffic is discussed in the course of the Supplemental EIR's alternatives analysis, it is appropriate to rely on and use as a basis of comparison the traffic analysis of the proposed project in the 2002 Final EIR, which the trial court and the Court of Appeal have upheld. Using two different methodologies or analyses of impacts would defeat the comparative purpose of an alternatives analysis.

Third, the comment's assertions regarding level of service "F" on the Highway 50 mainline do not account for the facts that the Interchange Project's contribution to that traffic condition would be a fraction, and that, as the commenter states, Highway 50 is projected to operate at level of service F, without the Interchange Project. See also Decision at 42. The commenter implies that the Interchange Project must have a significant traffic impact because Highway 50 will fall to level of service F, but that is not necessarily true. The key consideration is the project's traffic and its contribution to the level of service conditions. In any case, again, this is beyond the scope of the Supplemental EIR.

Further, the existing conditions on Highway 50 were the subject of much discussion in the comments and responses in the 2002 Final EIR, including comments from this same commenter. Caltrans responded to those comments, and those responses formed part of the basis for the conclusions that the courts ultimately upheld. In particular, the responses note that the 2002 Final EIR traffic study considered future traffic growth on Highway 50. Indeed, it assumed that such growth would occur, regardless of the Interchange Project (and the hotel/casino), and factored that future growth in background traffic into its analysis at rates that reflected historical trends and information from El Dorado County and the El Dorado County General Plan. 2002 Final EIR at Responses 39-10, 40-3, 41-2, 43-3 (response to El Dorado County comments, 43-DT-23, 43-DT-24 (responses to El Dorado County Department of Transportation comments), 51-5 (regarding the baseline for traffic analysis), 51-13 (regarding analysis of mitigation measures).

2-24. The commenter asserts that a report prepared by its consultant in 2005 (Dowling Report) to critique the traffic analysis in the 2002 Final EIR, which was completed in 2002 and upheld by the trial court in 2004 and the Court of Appeal in 2005, requires a new traffic analysis. This assertion is incorrect.

First, as explained above, all of the items the Dowling Report raises are beyond the scope of the Supplemental EIR. Decision at 41-43, 57-58.

Second, the Dowling Report is not a traffic study or traffic report, *per se*. Rather, it is a critique and comment on the traffic analysis in the 2002 Final EIR. Indeed, the commenter characterizes the Dowling Report as having been prepared "to update" the traffic study prepared for the 2002 Final EIR. The Dowling Report was completed on June 10, 2005. The comment period on the 2002 Draft EIR closed in June 2002, and Caltrans certified the 2002 Final EIR in December 2002, concluding the administrative process for the Interchange Project. Thus, the Dowling Report, as a comment on the 2002 Draft EIR, is three years too late. Conversely, as a

comment on the Supplemental EIR, it addresses issues that are beyond the required scope of analysis.

To ensure a complete response to this comment, however, to the extent the Dowling Report raises issues previously raised regarding the 2002 Final EIR, the previous responses to those comments are summarized here. To the extent the Dowling Report suggests that Caltrans revisit its traffic study using new traffic counts or other new information, however, as explained above, that is beyond the scope of the Supplemental EIR.

The Geographic Scope of the 2002 Final EIR's Traffic Analysis was Upheld and Appropriate

The Dowling Report first asserts that the 2002 EIR's traffic analysis "did not evaluate a sufficiently long section of the US 50 freeway. . . . Their proposed mitigation measure . . . is consequently inadequate." Caltrans responded to this issue previously in Response 41-2 in the 2002 Final EIR. That Response states that "[n]either the proposed interchange project nor the hotel/casino project is anticipated to make a considerable contribution to the cumulative traffic situation on Highway 50" at the Sacramento County/El Dorado County line. "Nonetheless, the EIR/EA proposes mitigation for mainline impacts on Highway 50 in the form of a fair share contribution toward mainline improvements." Thus, the 2002 EIR explained that an analysis of a longer section of Highway 50 is not warranted, and that, regardless, the Interchange Project mitigates its share of impacts on the Highway 50 mainline. Please also see Responses 43-DT-5 and 53-14 in the 2002 Final EIR, which provide detailed descriptions of the traffic mitigation imposed against the Interchange Project and the hotel/casino.

The Court of Appeal upheld Caltrans' analysis in this regard.

[VRL] is mistaken that the EIR erroneously omitted analysis of potential cumulative impacts on local roads and on Highway 50 more than two miles west and five miles east of the interchange site. At [El Dorado] County's request, the [2002 F]inal EIR evaluated all local roads and Highway 50 in the County along which the project is predicted to increase existing traffic volumes by two percent or more. . . . The EIR projected the future cumulative daily traffic volumes for the Highway 50 segment between the county line and El Dorado Hills Boulevard/Latrobe Road for the year 2022, noted that this segment was anticipated to operate at a deficient level of service (LOS) of "F" without the project, and also noted that the project would increase this projected daily volume by 3.1 percent. The EIR considered this increase to be a significant impact that could be mitigated to less than significant through . . . a fair share contribution to future master planned improvements for this highway segment as identified by Caltrans and [El Dorado] County.

Decision at 42. Accordingly, the analysis suggested in this comment is beyond the scope of the Supplemental EIR.

The 2002 Final EIR's Mitigation of Impacts to Highway 50 was Appropriate and Supported by Substantial Evidence, and was Upheld by the Trial Court and the Court of Appeal

The Dowling Report next asserts that Summer 2004 traffic counts: “indicate that existing plus project (sic) will cause level of service ‘F’ conditions on US 50, west of the East Shingle Springs Drive Interchange [and that the] proposed auxiliary lane mitigation east of East Shingle Springs Drive would not mitigate this deficiency.” As with the first comment, however, this comment does not take account of the Interchange Project’s fair share contribution to Highway 50 mainline improvements, and the benefits that contribution would have to alleviating these existing conditions. It also does not take account of the fact that traffic conditions on Highway 50 are already congested, and that Highway 50 will fall to LOS F regardless of the Interchange Project (according to the commenter). Further, these issues were raised in comments on the 2002 Draft EIR, and Caltrans responded to them in the 2002 Final EIR. 2002 Final EIR at Responses 39-10, 43-3, 43-DT-26, 43-DT-27, 51-5. Also, the trial court and the Court of Appeal upheld Caltrans’ analysis and conclusions on these points. Ruling at 21-22; Decision at 42.

The 2002 Final EIR's Trip Generation Calculations were Documented and Supported by Substantial Evidence and Were Upheld by the Trial Court and the Court of Appeal

The Dowling Report next asserts that the 2002 EIR’s traffic study based its trip generation estimates on information available in 2001, and that these estimates are no longer supported. On the contrary, the Court of Appeal concisely explained the broad and detailed analysis Caltrans conducted to arrive at the trip generation rates used in the 2002 Final EIR.

Caltrans has adequately defended its method of determining the trip generation rates. Caltrans used two approaches: an Urban Systems Marketing Study and an analysis of trip generation characteristics at five northern California Indian gaming casinos. The trip generation figures derived from these two approaches were then validated by trip generation studies involving Indian hotel-casinos in San Diego County and Minnesota, and by two studies using information from a well-recognized reference entity on this subject, the Institute of Transportation Engineers. This choice of method was within Caltrans’ discretion, so long as it provided an adequate analysis.

Decision at 41-42.

Further, the Interchange Project and casino/hotel proposal have not changed since the 2001 and 2002 analyses. Thus, there is no basis for revising the calculations regarding the trip generation of those facilities, as those calculations arise from factors internal to the project.

Also, these issues were addressed in comments and responses on the 2002 Final EIR. 2002 Final EIR at Responses 42-5, 42-8, 43-3, 43-DT-8, 51-7.

Finally, the trial court and the Court of Appeal upheld the 2002 EIR's trip generation estimates. Ruling at 21-22; Decision at 41. Accordingly, they are beyond the scope of the Supplemental EIR.

The 2002 Final EIR's Pass By Trip Assumptions Were Supported By Substantial Evidence, Were Upheld by the Trial Court and the Court of Appeal, and Remain Valid

The Dowling Report next claims that the pass-by trip assumptions for the 2002 EIR are unsupported by other traffic studies. Again, this challenge was made against the 2002 EIR and was rejected by the trial court and the Court of Appeal. Decision at 41-42 (upholding trip generation methodology). Accordingly, it is beyond further review and challenge. Also, the Responses to Comments in the 2002 Final EIR provide a detailed explanation and justification of the pass-by trip rate. 2002 Final EIR at Responses 39-10, 43-3.

The responses state that the pass-by rate "was established in coordination with Caltrans traffic engineering personnel." Further, the rate reflects the facts that, (1) "the proposed casino is in a unique location along a route with existing heavy gaming oriented traffic," (2) an early traffic analysis based on information from the marketing study for the casino concluded that as much as 57.7 percent of the trips generated by the casino would be due to existing passers by, and (3) the environmental assessment for the United Auburn Tribe's casino used a pass-by rate of 30 percent and that facility is a few miles from Interstate 80, therefore it would capture fewer passers-by than the Shingle Springs casino, which is directly accessible and visible from Highway 50, which is the main route for cars going to Lake Tahoe for gaming purposes. 2002 Final EIR at Response 39-10.

The Dowling Report compares the 2002 EIR's trip generation rates to those associated with the existing Thunder Valley Casino. In addition to being beyond the scope of the Supplemental EIR, that comparison is inapposite. First, the trip generation rates used in the 2002 EIR were determined on the basis of a number of factors, including information from several casinos. It is more reliable to develop trip generation rates based on such an evaluative approach, rather than referring to one single casino at one particular time, as the commenter suggests. Second, there are several important differences between the Thunder Valley Casino and the proposed casino on the Shingle Springs Rancheria. The proposed casino will have access directly from Highway 50, while the Thunder Valley casino is located some distance from Interstate 80. Also, Thunder Valley is currently operating without competition from a casino at Shingle Springs, while a casino at Shingle Springs will be operating in competition with the existing Thunder Valley casino.

Finally, the Dowling Report suggests that the 2002 EIR's traffic analysis should be extended westward and that the traffic counts, forecasts, trip rates and pass-by assumptions should all be updated. As explained above, this is beyond the scope of the Supplemental EIR and is not required by CEQA, the trial court or the Court of Appeal. Decision at 42-43 (Petitioners are "mistaken that the [2002] EIR erroneously omitted analysis of potential cumulative impacts on . . . Highway 50 more than two miles west . . . and the interchange site"). As also explained above, the 2002 Final EIR responded to comments on each of these issues.

In a footnote to this comment, the commenter asserts that a 2003 letter indicates a larger casino is foreseeable and that the Supplemental EIR must analyze that larger casino. Contrary to this

claim, the 2003 letter does not demonstrate that additional machines or a larger casino are reasonably foreseeable. Rather, the letter only sought to initiate a negotiation process that could lead to a new compact which would only take effect upon approval by the Governor and ratification by the Legislature. The letter was submitted to Governor Davis' administration shortly before the recall election. The negotiations following that letter concluded without any recommendation to the Legislature for a new compact for the Shingle Springs Rancheria. There has been no change to the Shingle Springs compact.

Even if at some point there was discussion regarding a larger casino, such a change could only be implemented in connection with a new compact, which would have to be approved by the California Legislature and the United States Department of the Interior. In addition, the terms of any new compact may place restrictions or further approval requirements on any expansion, including environmental reviews of impacts associated with any expansion. Given the need for such legislative and federal approval, and the uncertainty regarding the terms of any revision to the compact should such a revision be proposed, a larger casino is speculative at this time. CEQA Guideline 15145 discourages speculation in an EIR.

2-25. The commenter makes the serious accusation that Caltrans has “deliberately suppress[ed] and/or ignor[ed] the traffic information presented in the Dowling Report in making findings in the Supplemental EIR that the traffic would have no significant impacts” on Highway 50. As explained above, the Dowling Report was not submitted as part of any process wherein a response is required. As also explained, the information in the Dowling Report is years late as a comment on the 2002 EIR, and is beyond the scope of the Supplemental EIR. The only findings in the Supplemental EIR regarding the Interchange Project's traffic impacts are with respect to the new alternatives, and those are appropriately comparative to the proposed project. The commenter's statements to the contrary are incorrect. Likewise, the suggestion that additional mitigation may now be required is wrong.

2-26. The commenter again asserts that Caltrans erred in not reciting new traffic information or including a new traffic analysis in the Supplemental EIR. Please see Responses to Comments 2-22 through 2-24, above.

2-27. The commenter repeats its contention that Caltrans should re-open the traffic analysis for the Interchange Project by discussing an update by Dowling and Associates to the Dowling Report. This update is dated June 27, 2006. Thus, it post-dates the period for commenting on the EIR's traffic analysis by four years. Please see Responses 2-22 through 2-24, above, for further discussion.

2-28. Based on traffic counts and analysis done in 2006, years after the close of the 2002 Final EIR, this comment suggests that two mitigation measures, each consisting of constructing an additional lane on Highway 50, are required to reduce the Interchange Project's traffic impacts to level of service “E”. As explained in Response to Comment 2-24, above, substantial evidence supports the 2002 EIR's determination of the necessary mitigation, and the trial court and the Court of Appeal upheld that determination. As also explained above, the issue this comment raises is beyond the scope of the Supplemental EIR, as well as the trial court and Court of Appeal decisions.

2-29. This comment reiterates the prior comment regarding the scope of the 2002 Final EIR's traffic analysis. Please see Response 2-24, above.

2-30. This comment suggests that the Supplemental EIR should have revisited the 2002 Final EIR's analysis and conclusion regarding the environmentally superior interchange alternative. This is not correct.

First, such an analysis is beyond the scope of the Supplemental EIR. The Court of Appeal specifically limited the additional alternatives analysis to a smaller casino and hotel complex. A reevaluation of the interchange alternatives is not required.

Second, the comment suggests that the traffic reductions associated with Alternatives D and E render the 2002 Final EIR's conclusions regarding the environmentally superior interchange potentially invalid. As explained in more detail in Response 2-31, below, this comment disregards all environmental impact categories except traffic.

2-31. The comment claims that the selection of the environmentally superior alternative in the 2002 Final EIR "was largely predicated on the traffic impacts of the diamond interchanges . . . relative to the Flyover Design." This is not correct. The diamond interchange alternatives were also rejected because they affected more biologically sensitive areas, had greater visual effects, and had greater drainage effects. 2002 Draft EIR at p.2-11. These factors would not change regardless of the decreased traffic under Alternatives D and E. Further, although the traffic impacts associated with the diamond interchange designs might be reduced under Alternatives D and E, they would still be greater than for the flyover alternative because the flyover alternative eliminates intersections, and therefore is the most efficient design, regardless of the amount of traffic it carries.

2-32. As explained in Response 2-31, above, the commenter's claim that the Supplemental EIR should have revisited the environmentally superior interchange alternative is not correct, and its belated traffic analysis of the various interchange alternatives is not relevant. Further, the comment that the Supplemental EIR is deficient because it does not reanalyze the interchange alternatives disregards the Court of Appeal decision and the resultant scope of the Supplemental EIR.

2-33. This comment reaches to a Caltrans comment letter on an EIR prepared by Tehama County to make summary assertions about the Supplemental EIR. Caltrans understands the commenter's concerns about impacts to Highway 50. As explained in the 2002 EIR, those impacts were analyzed and mitigation was imposed. 2002 EIR at Section 5.4. The trial court and the Court of Appeal upheld that analysis and mitigation. Ruling at 21-22; Decision at 41-44. As explained in responses 2-23 through 2-32, above, the Supplemental EIR nonetheless appropriately responds to the Court of Appeal decision, and its conclusions are supported by substantial evidence.

In particular, this comment notes that the Tehama County EIR used the local thresholds for ozone precursor significance. Caltrans was not the lead agency for that EIR. It was the choice of the local lead agency, Tehama County, to use its own air district's thresholds. That is not the case here, where Caltrans, a state agency, is the lead agency for CEQA purposes. Caltrans is not required to use local thresholds. As explained above, this issue has been litigated and decided

against the assertion that local thresholds must be used. Accordingly, it is beyond the scope of the Supplemental EIR.

2-34. This comment asserts that the Supplemental EIR's alternatives analysis does not contain a sufficient level of detail. Please see Response 2-4, above.

2-35. This comment asserts that the Supplemental EIR's alternatives analysis does not contain a sufficient level of detail. Please see Response 2-4, above.

2-36. This comment claims that the Supplemental EIR is deficient because it does not identify an environmentally superior alternative. The commenter is correct that the Supplemental EIR does not identify an environmentally superior alternative, but the commenter is not correct that the Supplemental EIR is deficient. CEQA Guideline 15126.6(e)(2) requires an EIR to identify an environmentally superior alternative. Pursuant to Guideline 15163, however, a supplemental EIR need only contain the information necessary to supplement an existing EIR to make that EIR comply with CEQA. Because the 2002 Final EIR identifies an environmentally superior alternative (p.2-11), it is unnecessary for the Supplemental EIR to do so again.

In any case, Alternative E, which is comprised of a smaller casino and no hotel, is environmentally superior among the casino/hotel alternatives other than the No Project Alternative because its direct and indirect, on-site and off-site impacts in nearly every impact category would be less than both the proposed project and Alternative E.

2-37. This is a summary comment regarding the commenter's objections to the Supplemental EIR's alternatives analysis. Please see Responses 2-2 and 2-34 through 2-36, above.

2-38. The commenter claims that it was prejudiced because Appendix B to the Supplemental EIR was not available immediately on Caltrans' website. In evaluating and responding to this comment, Caltrans checked available records regarding its website posting, and also checked records regarding the public availability of the EIR, and the provision of hard copies of the EIR directly to the commenter. It is correct that Appendix B was posted on the Caltrans website approximately 15 days following the posting of the Draft Supplemental EIR. The record demonstrates, however, that Caltrans made the complete Draft Supplemental EIR – including Appendix B – publicly available during the entire review period at various locations, including locations in El Dorado County. As a legal matter, posting an EIR on a website is not required as part of the notice and circulation for a draft EIR, as set forth in CEQA Guideline 15087. CEQA Guideline 15085(e) *encourages* lead agencies to post EIR *notices* in electronic format, but there is no legal requirement to post notices, much less an entire EIR or appendices to an EIR, on a website. Thus, in having access to hard copies of the Draft Supplemental EIR for the full 45 days, the commenter and the public had all the access to Appendix B that CEQA requires.

Also, Caltrans sent, by Federal Express, numerous complete hard copies of the Supplemental EIR – including Appendix B – to multiple representatives of the commenter, including the commenter's Board of Supervisors and County Transportation Commission, and its County Counsel and Deputy County Counsel assigned to this matter. These complete hard copies arrived on May 22, 2006, the same day that the 45-day comment period commenced. See Federal Express receipts attached as Appendix F to these Responses to Comments. The

following representatives of El Dorado County received a hard copy of the complete Draft Supplemental EIR on May 22, 2006:

1. Norma Santiago – County Board of Supervisors
2. Rusty Dupray – County Board of Supervisors
3. Charlie Paine – County Board of Supervisors
4. Jack Sweeney – County Board of Supervisors
5. Helen Baumann – County Board of Supervisors
6. Helen Baumann – County Transportation Commission
7. Carl Hagan – County Transportation Commission
8. Robby Colvin – County Transportation Commission
9. Mark Acuna – County Transportation Commission
10. Jack Sweeney – County Transportation Commission
11. Charlie Paine – County Transportation Commission
12. Marian Washburn – County Transportation Commission
13. Rusty Dupray – County Transportation Commission
14. Lou Green – County Counsel
15. Thomas Cumpston – County Counsel
16. Ed Knapp – County Counsel
17. Liz Diamond – County Department of Transportation
18. Richard Shepard – County Department of Transportation
19. Greg Fuz – County Development Services Director
20. John Litwinovice – County Department of Social Services
21. Gerri Silva – County Environmental Management Department

Thus, in addition to having access to the complete Draft Supplemental EIR, El Dorado County was directly provided with numerous hard copies of the Draft Supplemental EIR on the first day of the 45-day comment period.

Caltrans also notes that the statement in the comment that the Draft Supplemental EIR was published on May 18, 2006 is not correct. John Webb, Chief of Caltrans Office of Environmental Services for the region signed the notice of availability on May 18, 2006, but the Draft Supplemental EIR was not officially published, and the 45 day-comment period did not begin to run, until May 22, 2006.

Finally, in response to the commenter's claims of prejudice, Caltrans has carefully evaluated those comments and respectfully but firmly disagrees with the commenter. The commenter has not shown any prejudice resulting from Appendix B being posted on the website a short time after the main body of the EIR was so posted. As noted above the commenter had received multiple hard copies of the EIR including Appendix B. Further, based upon its review of this issue, Caltrans has determined that the commenter did not contact Caltrans about this issue or ask for an electronic version of Appendix B until the commenter submitted its letter at the end of the comment period.

The commenter cites *Ultramar v. South Coast AQMD* (1993) 17 Cal.App.4th 689 to support its claim of prejudice. In that case, a lead agency failed to circulate the entire cumulative impacts section of the EIR. That case did not involve a temporary delay in posting an appendix on a website when the lead agency had already complied with all of the requirements in CEQA and

the CEQA Guidelines for providing notice that a draft EIR is available, and when the lead agency had actually made that draft EIR available.

2-39. Caltrans disagrees that the Supplemental EIR does not respond to the Court of Appeal decision and must be withdrawn. See Responses 2-1 through 2-38, above.